



**PLANNING COMMISSION WORK SESSION AGENDA**  
**Monday, August 10, 2020 - 6:00 PM**  
**City Hall, Conference Room A, 169 SW Coast Hwy, Newport, OR 97365**

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This meeting will be held electronically. The public can live-stream this meeting at [newportoregon.gov/citygov/comm/pc.asp](http://newportoregon.gov/citygov/comm/pc.asp). The meeting will also be broadcast on Charter Channel 190. Public comment may be made, via e-mail, up to two hours before the meeting start time at [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). Additionally, anyone wishing to speak on any agenda item, or during public comment, should e-mail their telephone number, and the item they wish to address, up to two hours before the start of the meeting, to [s.marineau@newportoregon.gov](mailto:s.marineau@newportoregon.gov), and staff will telephone that person with information on how to join the meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

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1. CALL TO ORDER
  
2. UNFINISHED BUSINESS
  
- 2.A Final Work Session Review of Municipal Code Amendments Related To Car Camping.  
[Memorandum](#)  
[NMC Chapter 9.50 Amendments 8-6-2020](#)  
[NMC Chapter 6.25 Amendments 2-10-2020](#)  
[NMC Chapter 9.80 Amendments 2-10-2020](#)  
[NMC Chapter 14.03 Amendments 2-10-2020](#)  
[NMC Chapter 14.06 Amendments 2-10-2020](#)
  
3. NEW BUSINESS
  
- 3.A Review of League of Oregon Cities Model Ordinance and Design Guidelines for Small Wireless Facilities.  
[Memorandum](#)


[League of Oregon Cities Small Wireless Facilities Model Ordinance - June 2020](#)  
[League of Oregon Cities Small Wireless Facilities Model Design Guidelines - June 2020](#)  
[String of emails from Mona Linstromberg and others dated February 2020](#)  
[LOC summary of FCCs 6-9-2020 Declaratory Ruling](#)  
[Wireless Facilities PowerPoint Presentation](#)  
[FAQ on Small Wireless Facilities](#)  
[Newport LOC Model Ordinance Comment](#)  
[Additional Public Testimony-Mona Linstromberg](#)  
[Additional Public Testimony-Eva Bortnick](#)  
[Additional Public Testimony-Susan Greenough](#)

**3.B Updated Planning Commission Work Program.**  
[PC Work Program 8-06-20](#)

**4. ADJOURNMENT**

# Memorandum

To: Planning Commission/Commission Advisory Committee

From: Derrick I. Tokos, AICP, Community Development Director 

Date: August 6, 2020

Re: Final Work Session Review of Municipal Code Amendments Related to Car Camping

Enclosed is an updated draft set of amendments to NMC Chapter 9.50 regulating camping within the city limits, including provisions for car camping by homeless individuals. Changes you requested at the July 27, 2020 work session are listed under NMC 9.50.050. On item that I haven't put language together for yet is a limit on the number of a days an individual can overnight camp at a particular location. I am working with City Attorney, David Allen, to research the issue a little bit, since other jurisdictions that have adopted these types of ordinances haven't imposed such a limitation. We would like to know if this was a policy choice or if there is a legal issue that we are not thinking of. As I understand it, the desire to limit the number of consecutive overnights that an individual can stay is out of a concern that an operator might inadvertently allow somebody to stay long enough that they would be protected by landlord/tenant law, making it harder for them to be evicted if they don't want to leave. Please let me know if there are other reasons.

Also, attached are the other chapters of the Municipal Code that are being revised as part of this package of amendments. You last reviewed these in February, so this is an opportunity for you to give them a quick once over before a public hearing is scheduled.

Assuming the package looks good, then our plan is to schedule a public hearing for August 24, 2020. The results of our research on the question of limiting the number of consecutive days an individual can car camp would be presented that evening, with optional language and/or an explanation of any legal issues we identified.

### Attachments

Mark-up copy of NMC Chapter 9.50 amendments, dated August 6, 2020  
 Mark-up copy of NMC Chapter 6.25 amendments, dated February 10, 2020  
 Mark-up copy of NMC Chapter 9.80 amendments, dated February 10, 2020  
 Mark-up copy of NMC Chapter 14.03 amendments, dated February 10, 2020  
 Mark-up copy of NMC Chapter 14.06 amendments, dated February 10, 2020

(Deleted language shown in ~~strikethrough~~ and language to be added is depicted with a double underline. Staff comments are in *italics*.)

## CHAPTER 9.50 CAMPING PROHIBITED IN CERTAIN PLACES

### 9.50.010 Definitions

The following definitions apply in this chapter.

- A. To camp means to set up, or to remain in or at, a campsite.
- B. Campsite means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire, is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.
- C. Personal property means items which are reasonably recognizable as belonging to individual persons and which have apparent utility.
- D. Junk means items that have no apparent utility or are in an unsanitary condition.

### 9.50.020 Camping Prohibited in Certain Places

It is unlawful for any person to camp in or upon any sidewalk, street, alley, lane, public right of way, transit facility or bus shelter, or any other place to which the general public has access, or under any bridgeway or viaduct, unless otherwise specifically authorized by this city or by declaration by the mayor or city manager in emergency circumstances. Nothing in this chapter shall prohibit the use of designated picnic areas of public property for cooking, or prohibit camping by permit authorized by the city manager or designee.

### 9.50.030 Scheduling and Notice of Campsite Cleanup

- A. Cleanup of illegal campsites will be scheduled on an as-needed basis by the chief of police or designee.
- B. Permanent signs may be posted advising that camping is prohibited. Whether or not a permanent sign is posted, a specific dated and timed notice will be posted and distributed in the area of a scheduled cleanup at least 24 hours before the cleanup.

- C. Notwithstanding subsections A. and B., cleanup of campsites may occur immediately and without notice if the chief of police or designee determine that either of the following conditions exist:
  - 1. An exceptional emergency such as possible site contamination by hazardous materials or where there is an immediate danger to human life or safety;
  - 2. Illegal activity other than camping.
- D. At the time of the cleanup, written notice will be posted and distributed announcing the telephone number where information on picking up the stored property can be obtained during normal business hours.
- E. Written notices, including permanent signs, will be in both English and Spanish.
- F. Copies of all notices shall be provided to the State of Oregon Department of Human Services and/or to the Lincoln County Human Services Department.

#### 9.50.040 Removal, Storage and Retrieval of Personal Property

- A. Personal property will be separated during cleanups from junk. Junk will be immediately discarded. Items of personal property will be turned over to the police department and stored. The personal property shall be stored for no less than 30 days, during which time it will be reasonably available to persons claiming ownership of the personal property.
- B. The police department shall arrange in advance for a location to store personal property. The storage facility should be reasonably secure. The location should be reasonably accessible to the cleanup area and preferably served by public transportation.
- C. Any personal property that remains unclaimed for 30 days after the cleanup may be disposed of, sold, donated, used, or transferred as abandoned personal property, but no waiting period beyond the 30 days is required prior to the disposal, sale, donation, use or transfer.

August 10, 2020 Mark-up Copy of Amendments to NMC Chapter 9.50,  
Camping Prohibited in Certain Areas

- D. Weapons, drug paraphernalia, and items which reasonably appear to be either stolen or evidence of a crime may be retained by the police department.

9.50.050 Permitted Camping

A. The prohibitions in Section 9.50.020 shall not apply to the following circumstances:

1. The property involved is appropriately zoned and has all necessary approvals for the proposed camping use, in a vehicle or otherwise, as provided in Title XIV of the Newport Municipal Code; or
2. Camping is occurring in accordance with a duly executed emergency declaration made pursuant to Section 1.70.030; or
3. A special events permit has been issued in accordance with Chapter 9.80 authorizing camping; or
4. The owner of a commercial or industrial property, a public entity, or a religious institution/place of worship may offer overnight camping space to homeless persons living in vehicles, provided:
  - a. such accommodations are made free of charge, and
  - b. occupancy is limited to three or fewer vehicles at a time, unless otherwise provided by Oregon Revised Statute; and
  - c. vehicles are located within an on-premise parking lot, and are spaced at least one parking stall apart from one another or 10 feet if the parking stalls are not marked; and
  - d. all items and materials are stored in vehicles or in a separate storage area that is screened from view from adjacent properties and public rights-of-way; and
  - e. campers are provided access to sanitary facilities, including a toilet, hand washing and trash disposal facilities, with such facilities being at least 20-feet from the property line of a residential use if not fully contained within a building.

*Staff: This language outlines the circumstances by which camping can be permitted within the city limits. The first three options cite to existing code provisions. The last item, related to overnight car camping by homeless persons, draws from language in ORS 203.082 that is specific to religious institutions/places of worship. At a July 27, 2020 work session, the Commission requested that the car camping rules be expanded to commercial, industrial and public properties, that spacing/screening standards be applied, and that a relief valve be included for the occupancy limit in case the Oregon Legislature amends the three-vehicle cap presently included in ORS 203.082 (as was proposed with HB 4001 (2019) and temporarily implemented with HB 4212 (2020)).*

9.50.060 Violation

Violation of this chapter is a nuisance and is also a civil infraction.

9.50.070 Nonexclusive Remedy

The remedies described in this chapter shall not be the exclusive remedies of the city for violations of this chapter.

9.50.080 Interpretation

This chapter is to be interpreted to be consistent with applicable state statutes and providing the protections required by state statutes.



(Deleted language shown in ~~strikethrough~~ and language to be added is depicted with a double underline. Staff comments are in *italics*.)

CHAPTER 6.25 RECREATIONAL VEHICLE PARKING

6.25.005 Definitions

**Public Or Private Parking Lot** means a parking lot that is open to the general public for parking, whether for a fee or not. Parking lot does not include areas reserved for owners or tenants of a property.

**Recreational Vehicle or RV** means a vehicle ~~that contains facilities for sleeping with or without motive power that is designed for use as temporary living quarters and as further defined in OAR 735-022-0140~~. Examples include motor homes, camping trailers, tent trailers, truck campers and camper vans.

~~Self-contained means including a functional sink and toilet with on-board storage of wastewater.~~

*Staff: Definition for recreational vehicle is modified to align with current definition contained in ORS 174.101(3). That definition, amended in 2019, refers to administrative rules adopted by the Director of Transportation. That rule-making process was completed effective January 1, 2020. This definition is more relevant to the titling of RVs and differs slightly from the definition required by FEMA for RV's placed in a floodplain (NMC 14.20.020((24))) and the definition contained in the zoning ordinance that relates to RV Parks and the placement of RVs on individual lots outside of RV Parks (NMC 14.01.020).*

6.25.010 Parking of Recreational Vehicles

A. Recreational vehicles may not be parked and occupied in the right-of-way or on any public or private parking lot between the hours of 11:00 P.M. and 5:00 A.M., except ~~as provided in subsections B. and C~~ in areas where camping is permitted as identified in Section 9.50.050.

~~B. For special events, the owner of a paved or otherwise adequately surfaced parking area may allow self-contained RVs to park at no charge, providing that the~~



~~owner has obtained a permit from the city. The city may impose conditions on the permit, and the permittee shall be responsible for compliance with all permit terms. The permittee shall allow parking only if all available RV parks, including state parks that allow RV camping, are full.~~

~~G. Marina owners or operators may allow up to 50% of the parking area for the marina to be used for overnight parking of RVs of marina customers during the period between July 1 and the end of the Labor Day weekend, providing the owner has obtained a permit from the city. The city may impose conditions on the permit, and the permittee shall be responsible for compliance with all permit terms. No permit may be issued to a marina that does not have an approved sanitary facility for the disposal of septic wastes. The owner or operator of the facility shall collect and remit the city's room tax.~~

~~D. The planning department shall be responsible for issuance of the permits under this section and for the imposition of conditions. The planning department may create a set of standard permit conditions.~~

*Staff: A permitting program of this nature has never been instituted, and the options listed in Section 9.50.050 outline circumstances where overnight parking of RVs is permissible.*

(Deleted language shown in ~~strikethrough~~ and language to be added is depicted with a double underline. Staff comments are in *italics*.)

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- D. Junk means items that have no apparent utility or are in an unsanitary condition.

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- A. Cleanup of illegal campsites will be scheduled on an as-needed basis by the chief of police or designee.
- B. Permanent signs may be posted advising that camping is prohibited. Whether or not a permanent sign is posted, a specific dated and timed notice will be posted and distributed in the area of a scheduled cleanup at least 24 hours before the cleanup.

- C. Notwithstanding subsections A. and B., cleanup of campsites may occur immediately and without notice if the chief of police or designee determine that either of the following conditions exist:
  - 1. An exceptional emergency such as possible site contamination by hazardous materials or where there is an immediate danger to human life or safety;
  - 2. Illegal activity other than camping.
- D. At the time of the cleanup, written notice will be posted and distributed announcing the telephone number where information on picking up the stored property can be obtained during normal business hours.
- E. Written notices, including permanent signs, will be in both English and Spanish.
- F. Copies of all notices shall be provided to the State of Oregon Department of Human Services and/or to the Lincoln County Human Services Department.

9.50.040 **Removal, Storage and Retrieval of Personal Property**

- A. Personal property will be separated during cleanups from junk. Junk will be immediately discarded. Items of personal property will be turned over to the police department and stored. The personal property shall be stored for no less than 30 days, during which time it will be reasonably available to persons claiming ownership of the personal property.
- B. The police department shall arrange in advance for a location to store personal property. The storage facility should be reasonably secure. The location should be reasonably accessible to the cleanup area and preferably served by public transportation.
- C. Any personal property that remains unclaimed for 30 days after the cleanup may be disposed of, sold, donated, used, or transferred as abandoned personal property, but no waiting period beyond the 30 days is required prior to the disposal, sale, donation, use or transfer.

February 10, 2020 Mark-up Copy of Amendments to NMC Chapter 9.50, Camping Prohibited in Certain Areas

- D. Weapons, drug paraphernalia, and items which reasonably appear to be either stolen or evidence of a crime may be retained by the police department.

#### 9.50.050 Permitted Camping

##### A. The prohibitions in Section 9.50.020 shall not apply to the following circumstances:

1. The property involved is appropriately zoned and has all necessary approvals for the proposed camping use, in a vehicle or otherwise, as provided in Title XIV of the Newport Municipal Code; or
2. Camping is occurring in accordance with a duly executed emergency declaration made pursuant to Section 1.70.030; or
3. A special events permit has been issued in accordance with Chapter 9.80 authorizing camping; or
4. A religious institution/place of worship offers overnight camping space on the institutions property to homeless persons living in vehicles, provided such accommodations are made free of charge, are limited to three or fewer vehicles at a time, and campers are provided access to sanitary facilities, including a toilet, hand washing and trash disposal facilities.

*Staff: This language outlines the circumstances by which camping can be permitted within the city limits. The first three options cite to existing code provisions. The last item, related to overnight car camping by homeless persons at religious institutions/places of worship implements optional language contained in ORS 203.082.*

#### 9.50.060 Violation

Violation of this chapter is a nuisance and is also a civil infraction.

#### 9.50.070 Nonexclusive Remedy

The remedies described in this chapter shall not be the exclusive remedies of the city for violations of this chapter.

**9.50.080 Interpretation**

This chapter is to be interpreted to be consistent with applicable state statutes and providing the protections required by state statutes.

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## CHAPTER 9.80 SPECIAL EVENT PERMITS

### 9.80.010 Special Event Definitions

“Fee Waiver” is a waiver of city fees for providing a service or facility use.

“Special Event” is any private activity conducted wholly or partly on public property, or that requires the use of city services, such as closure of a street or park, or provision of traffic control, or other services. Special Event includes, but is not limited to, a parade, festival, exposition, show, sale, party, or other similar activity. Special Event also includes events on private or other public property for which the city provides additional services. Special Events does not include:

- A. Events held in the Performing Arts Center or the Visual Arts Center unless special services are requested of the city;
- B. Events conducted at city facilities including the swimming pool and recreation center unless a Fee Waiver is requested;
- C. The use of meeting rooms at any city facility unless a Fee Waiver is requested or the fee has otherwise been waived by city policy.

“Special Event Permit Fees” are based on the actual costs of the city providing the service requested, and may include personnel, benefit costs, equipment costs, and published room rental costs.

*Staff: This change clarifies that a Special Event Permit is required for a private activity that occurs on public property, irrespective of whether or not it requires the use of city services. Similarly, an activity on private property must apply for a Special Event Permit if it requires the use of city services.*

### 9.80.015 Special Event Fees and Waivers

- A. Applicants may request a full or partial Fee Waiver of Special Event Permit Fees. A request for a Fee Waiver must be submitted with a Special Event permit application. The city may, in its discretion, approve all, part, or none of a Fee Waiver request. The following will be considered in the city's review of a request for a Fee Waiver:
1. Whether the event is a benefit to the community.
  2. Whether the event creates positive publicity for the city.
  3. The city's cost of providing services for/to the event.
  4. Whether there are revenues that can be used to offset the impact of a Fee Waiver on the general fund.
  5. Whether the event promotes education, public health, or public safety.
  6. Whether the event is operated by a non-profit organization.
  7. Whether the event has in the past or is likely in the future to take action that, if taken by a governmental entity, would be unconstitutional. The city will not provide a Fee Waiver for any Special Event or entity that takes action in regard to the Special Event that, if taken by the city, would be unconstitutional.
- B. Unless waived, all fees required for the Special Event must be paid prior to the issuance of a permit. In no event, will the Fee Waiver be more than the city's cost of providing service to the event.

### 9.80.020 Special Event Applications

- A. All persons who wish to conduct a Special Event must submit an application form to the city recorder. Special Event application forms are available on the city's website at [www.NewportOregon.gov](http://www.NewportOregon.gov). Special Event permit applications shall be reviewed and approved or denied administratively by the city manager following the procedures and standards of this chapter, unless the amount of the requested Fee Waiver is in excess of



\$2,000, in which case the application shall be forwarded to the City Council for action.

- B. Applications will be deemed incomplete and will be denied if details about the Special Event are insufficient for staff to properly analyze and determine the impacts on city services, or if submitted with insufficient time to allow for city staff to evaluate the impacts and coordinate any city services required to allow the event to proceed.
- C. Temporary structures may be erected in conjunction with a Special Event provided the following are met:
- ~~1. The time limit for such structures is no longer than 30 days prior to and five (5) days after the Special Event.~~
  21. Permission for the structure is granted by the property owner.
  - ~~3~~2. A city business license is obtained.
  - ~~4~~3. The person or persons responsible for the temporary structure shall appropriately maintain the grounds and provide trash receptacles.
  - ~~5~~4. Sanitary facilities are made available to the site during the Special Event.
  - ~~6.5~~5. The structure does not interfere with the provision of parking for the permanent use on the site, or a traffic management plan is provided that is acceptable to the city.
  - ~~7.6~~6. The structure satisfies the vision clearance requirements of ~~the Zoning Code~~ Chapter 14.17.
  - ~~8~~7. ~~Written approval for the temporary structure is obtained from the city's building official. The structure satisfies applicable provisions of the Building Codes, as outlined in Chapter 11.05 and Fire Codes as provided in Chapter 11.10.~~
  - ~~9.~~8. ~~The person or persons responsible for the temporary structure have signed the city agreement relating to the temporary structure.~~

- D. Applications must include evidence of compliance with any required permits from other governmental agencies (e.g., health department, liquor license, etc.), as may be requested by the city.
- E. Special Event organizers may be required to maintain liability insurance for the event in an amount deemed acceptable by the city manager, with the city named as an additional insured.
- F. Recipients of tourism promotion grants are ineligible for Special Event Fee Waivers.
- G. The city manager is delegated the authority to establish rules, procedures, and policies to implement and supplement this chapter and to develop application forms and other standard materials to be used in the application process.

*Staff: The duration of a Special Event is specified in the permit (NMC 9.80.032) therefore it is not necessary to specify an alternative timeframe for temporary structures. A separate agreement is also not needed. Building and Fire Codes do not apply to all types of temporary structures, so the language has been clarified to indicate that such standards must be met only when they are applicable.*

#### 9.80.022 Approval/Denial of Special Event Permit

- A. The completed application will be reviewed by the department heads. The applicant may be required to provide additional information. Denied applications may be amended and resubmitted.
- B. Reasons for denial of a Special Event permit include, but are not limited to:
  - 1. The city lacks the resources to provide the services that are required for the event.
  - 2. A requested facility or site is not available at the time requested.
  - 3. The event requests use of city streets at a time, or for a duration, that would create too great an impact on the public transportation system.

4. The applicant submitted false information in connection with the application.
  5. The applicant has failed to complete all aspects of the application.
- C. If the Special Event application is approved and no Fee Waiver has been approved, the city recorder will collect the appropriate fee and issue the permit. If the Special Event application is approved and a Fee Waiver has been approved in full, the city recorder will issue the permit.
- D. If denied, the city recorder will notify the applicant in writing and give the reason for denial. If time permits, the applicant may correct the reasons for denial and resubmit the application for approval. If an applicant is again denied a permit, the applicant may appeal the denial, within 14 days of the date of the written denial by filing a written notice of appeal with the city recorder. The appeal shall be heard at a regular City Council meeting at least seven days after the date the appeal is filed. The appeal shall be decided by the City Council and is final.

#### 9.80.032 Effectiveness of Special Event Permit

Notwithstanding any other restrictions and prohibitions in this code, a Special Events-Event Permit, when approved, shall serve to authorize the stated activity~~shall be approved for only the specified~~ dates, times, and locations ~~stated~~ specified in the permit.

*Staff: Clarifies that a Special Event Permit, when issued, supersedes any conflicting provisions of the Newport Municipal Code.*

#### 9.80.035 Violation of a Special Event Permit

- A. Any event subject to the provisions of this chapter that is staged without complying with all conditions of this chapter shall be subject to closure by the police department.
- B. The city may revoke a permit if it is determined by the city manager that the event is being operated in violation of the Newport Municipal Code.

- C. The city may revoke a permit and/or apply a fine of up to \$500 per day if it determines an applicant has violated this chapter.

*(Ordinance No. 2000 repealed Ordinance No. 1948 and was adopted on March 15, 2010; effective April 14, 2010.)*

(Deleted language shown in ~~strikethrough~~ and language to be added is depicted with a double underline. Staff comments are in *italics*.)

## CHAPTER 14.03 ZONING DISTRICTS

### 14.03.010 Purpose.

It is the intent and purpose of this section to establish zoning districts for the City of Newport and delineate uses for each district. Each zoning district is intended to service a general land use category that has common location, development, and use characteristics. The quantity and availability of lands within each zoning district shall be based on the community's need as determined by the Comprehensive Plan. Establishing the zoning districts also implements the General Land Use Plan Map as set forth in the Comprehensive Plan.

### 14.03.020 Establishment of Zoning Districts.

This section separates the City of Newport into four (4) basic classifications and thirteen (13) use districts as follows:

#### A. Residential.

1. R-1 Low Density Single-Family Residential.
2. R-2 Medium Density Single-Family Residential.
3. R-3 Medium Density Multi-Family Residential.
4. R-4 High Density Multi-Family Residential.

#### B. Commercial.

1. C-1 Retail and Service Commercial.
2. C-2 Tourist Commercial.
3. C-3 Heavy Commercial.

#### C. Industrial.

1. I-1 Light Industrial.
2. I-2 Medium Industrial.
3. I-3 Heavy Industrial.

- D. Water Related.
  - 1. W-1 Water Dependent.
  - 2. W-2 Water Related.
- E. Public.
  - 1. P-1 Public Structures.
  - 2. P-2 Public Parks.
  - 3. P-3 Public Open Space.

*\*Section 2-2-6.010 amended by Ordinance No. 1336 (7-5-83); Section 2-2-4 amended by Ordinance No. 1344 (11-7-83); Sections 2-2-1 and 2-2-6 amended by Ordinance No. 1356 (1-3-84); Sections 2-2-3, 2-2-4, 2-2-5, 2-2-6, and 2-2-7 amended by Ordinance No. 1447 (12-16-85); Section 2-2-6.015 amended by Ordinance No. 1468 (8-19-86); Section 2-2-4 amended by Ordinance No. 1526 (11-7-88); Section 2-2-2.010 amended by Ordinance No. 1565 (14.36.0010); Section 2-2-4 amended by Ordinance No. 1567 (14.36.0010); the above became obsolete when Sections 2-2-1 through 2-2-12 were totally amended by Ordinance No. 1575 (7-2-90); and then the entire Section was repealed and replaced by Ordinance No. 2022 (10-20-11).*

#### 14.03.030 City of Newport Zoning Map.

The zoning districts established by this section are officially identified on the map entitled "City of Newport Zoning Map," by reference incorporated herein. Zoning district boundaries, as shown on the official map, shall be construed as follows:

- A. City limit lines;
- B. Platted lot lines or other property lines as shown on the Lincoln County Assessor's plat maps;
- C. The centerline of streets, railroad tracks, or other public transportation routes;
- D. The centerline of streams or other watercourses as measured at Mean Low Water. In the event of a natural change in location of the centerline of such watercourse, then the zoning district boundary shall be construed to moving with the channel centerline; and
- E. The Mean Higher High Tide Line.

#### 14.03.040 Intent of Zoning Districts.

Each zoning district is intended to serve a general land use category that has common locations, development, and service characteristics. The following sections specify the intent of each zoning district:

R-1/"Low Density Single-Family Residential." The intent of the R-1 district is to provide for large lot residential development. This district should also be applied where environmental constraints such as topography, soils, geology, or flooding restrict the development potential of the land.

R-2/"Medium Density Single-Family Residential." The intent of this district is to provide for low density, smaller lot size residential development. It is also the ambition of this district to serve as a transitional area between the low density residential district and higher density residential districts.

R-3/"Medium Density Multi-Family Residential." This district is intended for medium density multi-family residential development. It is planned for areas that are able to accommodate the development of apartments. New R-3 zones should be near major streets, on relatively flat land, and near community or neighborhood activity centers.

R-4/"High Density Multi-Family Residential." This district is intended to provide for high density multi-family residential and some limited commercial development. New R-4 zones should be on major streets, on relatively flat land, and near commercial centers.

C-1/"Retail and Service Commercial." The intent of the C-1 district is to provide for retail and service commercial uses. It is also intended that these uses will supply personal services or goods to the average person and that a majority of the floor space will be devoted to that purpose. Manufacturing, processing, repair, storage, or warehousing is prohibited unless such activity is clearly incidental to the business and occupies less than 50% of the floor area.

C-2/"Tourist Commercial." The intent of this zone is to provide for tourist needs, as well as for the entertainment needs of permanent residents.

C-3/"Heavy Commercial." The intent of this zone is to provide for commercial uses that are frequently incompatible with



retail and service commercial uses. This zone is also intended to provide uses that utilize more than 50% of the floor area for storage, repair, or compounding of products but do not constitute a nuisance because of noise, dust, vibration or fumes.

I-1/"Light Industrial." The intent of this zone is to provide for commercial and industrial uses that can be located near residential or commercial zones. Uses that are associated with excessive noise, dust, vibration, or fumes shall be prohibited.

I-2/"Medium Industrial." The intent of this zone is to provide areas suitable for industrial activities, including manufacturing, fabricating, processing, packing, storage, repairing, and wholesaling. This classification should be applied to industrial areas having good access to transportation facilities and not near residential zones.

I-3/"Heavy Industrial." The intent of this zone is to provide for industrial uses that involve production and processing activities generating noise, vibration, dust, and fumes. Typically, this zone requires good access to transportation, large lots, and segregation from other uses due to nuisances.

W-1/"Water-Dependent." The intent of the W-1 district is to protect areas of the Yaquina Bay Shorelands, as identified in the Newport Comprehensive Plan, for water-dependent uses. For purposes of this section, a water-dependent use is one which needs contact with or use of the water for water-borne transportation, recreation, energy production, or water supply. All uses in a W-1 district shall comply with the following standards:

- A. Existing water-dependent uses or future water-dependent uses anticipated by the Comprehensive Plan shall not be preempted or restricted by non-water-dependent uses. In determining whether or not a use preempts or restricts a water-dependent use, the following shall be considered:
  1. Water-related uses accessory to and in conjunction with water-dependent uses.
  2. Temporary or mobile uses such as parking lots or temporary storage areas.

3. Incidental and accessory non-water-dependent uses sharing an existing structure with a water-dependent use.
- B. Applicable policies in the Yaquina Bay Estuary and Yaquina Bay Shoreland sections of the Comprehensive Plan shall be followed.
  - C. In determining whether a conditional use should be allowed, consideration shall be given to whether the site or portion thereof is within an area designated as especially suited for water-dependent or water-related uses in the Comprehensive Plan. If the property is within that area, then the site shall be protected for water-dependent and water-related recreational, commercial, and industrial uses.

W-2/"Water-Related." The intent of the W-2 district is to provide areas within and adjacent to the Yaquina Bay Shorelands for water-dependent, water-related, and other uses that are compatible or in conjunction with water-dependent and water-related uses. In determining whether or not a use is water-related, the following shall be uses:

- A. The proposed use is directly associated with a water-dependent use by supplying materials or services, or by using projects of water-dependent uses; and
- B. Location away from the water would result in a public loss in the quality of goods or services after considering economic, social, environmental, and energy effects.

All conditional uses in a W-2 district shall also comply with the following standard:

In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality.

#### 14.03.050

##### Residential Uses.

The following list sets forth the uses allowed within the residential land use classification. Uses not identified herein are not allowed. Short-term rentals are permitted uses in the City of Newport's R-1, R-2, R-3 and R-4 zone districts subject to requirements of [Chapter 14.25](#).

February 10, 2020 Mark-up Copy of Amendments to NMC Chapter 14.03, Zoning Districts

"P" = Permitted uses.

"C" = Conditional uses; permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		R-1	R-2	R-3	R-4
A.	Residential				
	1. Single-Family	P	P	P	P
	2. Two-family	X	P	P	P
	3. Multi-family	X	X	P	P
	4. Manufactured Homes*	P	P	P	P
	5. Mobile Home Park	X	P	P	P
B.	Accessory Dwelling Units	P	P	P	P
	(B. was added on the adoption of Ordinance No 255 on June 17, 2013; and subsequent sections relettered accordingly. Effective July 17, 2013.)				
C.	Accessory Uses	P	P	P	P
D.	Home Occupations	P	P	P	P
E.	Community Services				
	1. Parks	P	P	P	P
	2. Publicly Owned Recreation Facilities	C	C	C	C
	3. Libraries	C	C	C	C
	4. Utility Substations	C	C	C	C
	5. Public or Private Schools	C	C	C	P
	6. Child Care Facilities	P	P	P	P
	7. Day Care Facilities	C	C	C	C
	8. Churches/Religious Institutions/Places of Worship	C	C	C	C
F.	Residential Care Homes	P	P	P	P
G.	Nursing Homes	X	X	C	P
H.	Bed and Breakfast Inns	X	X	C	C
I.	Motels and Hotels	X	X	X	C
J.	Professional Offices	X	X	X	C
K.	Rooming and Boarding Houses	X	X	C	P
L.	Beauty and Barber Shops	X	X	X	C
M.	Colleges and Universities	C	C	C	C
N.	Hospitals	X	X	X	P
O.	Membership Organizations	X	X	X	p
P.	Museums	X	X	X	P
Q.	Condominiums	X	P	P	P
R.	Hostels	X	X	X	C
S.	Golf Courses	C	C	C	X
T.	Recreational Vehicle Parks	X	X	X	C
U.	Necessary Public Utilities and Public Service Uses or Structures	C	C	C	C
V.	Residential Facility*	X	X	P	P
W.	Movies Theaters**	X	X	X	C
X.	Assisted Living Facilities***	X	C	P	P
Y.	Bicycle Shop****	X	X	X	C

*Staff: Change is being made such that the City is using consistent terminology.*

*(Section 14.03.050 was amended by Ordinance No. 2144, adopted on May 6, 2019: effective May 7, 2019.)*

#### 14.03.060 Commercial and Industrial Districts.

The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

*\* Added by Ordinance No. 1622 (10-7-91).*

*\*\* Added by Ordinance No. 1680 (8-2-93).*

*\*\*\* Added by Ordinance No. 1759 (1-21-97).*

*\*\*\*\* Added by Ordinance No. 1861 (10-6-03).*

*\*\*\*\*\* Amended by Ordinance No. 1989 (1-1-10).*

- A. Application of Use Categories. Uses are to be assigned to the category whose “Characteristics” most closely describe the nature of the primary use. Developments may have more than one primary use. “Use Examples” are provided for each use category. The names of uses on the list are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is “Wholesale Liquidation” but that sells mostly to consumers would be included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description on the Retail Sales and Service category.
- B. Interpretation. When a use’s category is not clearly identifiable, the Community Development Director shall determine the applicable use category under a Type I decision-making process as provided by [Section 14.52](#). The following factors are to be considered to determine what use category the use is in, and whether or not the activities constitute a primary use.
1. The description of the activity(ies) in relationship the characteristics of each use category;
  2. The relative amount of site or floor space and equipment devoted to the activity;
  3. Relative amount of sales from each activity;
  4. The customer type for each activity;
  5. The relative number of employees for each activity;

6. Hours of operation;
  7. Building and site arrangement;
  8. Vehicles used with the activity;
  9. The relative number of vehicle trips generated by the activity;
  10. Signs;
  11. How the use advertises itself; and
  12. Whether the activity would function independently of other activities on the site;
- C. Commercial Use Categories
1. Office
    - a. Characteristics. Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services. Traffic is primarily from employees with limited customer interactions.
    - b. Examples. Examples include financial businesses such as lenders, brokerage houses, bank headquarters; data processing; headquarters for professional service firms (lawyers, accountants, engineers, architects, etc.), sales offices; government offices; public utility offices; TV and radio studios; medical and dental clinics, and medical and dental labs.
    - c. Exceptions.
      - i. Offices that are part of and are located with a firm in another category are considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a primary use in another category, are considered part of the other category.
      - ii. Contractors and others who perform construction or similar services off-site are

included in the Office category if equipment and materials are not stored on the site and fabrication, services, or similar work is not carried on at the site.

## 2. Retail Sales and Service

- a. Characteristics. Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.
- b. Examples. Examples include uses from the four subgroups listed below:
  - i. Sales-oriented, general retail: Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, books, clothing, dry goods, electronic equipment, fabric, fuel, gifts, groceries, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, and videos; food sales. Sales oriented general retail includes the service but not repair of vehicles.
  - ii. Sales-oriented, bulk retail: Stores selling large consumer home and business goods, including appliances, furniture, hardware, home improvements, and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.
  - iii. Personal service-oriented: Branch banks; urgency medical care; Laundromats; photographic studios; photocopy and blueprint services; printing, publishing and lithography; hair, tanning, and personal care services; tax preparers, accountants, engineers, architects, real estate agents, legal, financial services; art studios; art, dance, music, martial arts, and other recreational or cultural classes/schools; hotels (non-transient); motels (non-transient); taxidermists; mortuaries; veterinarians; kennels

limited to boarding and training with no breeding; and animal grooming.

*(Amended by Ordinance No. 2142 (11-14-18).)*

iv. Entertainment-oriented: Restaurants (sit-down and drive through); cafes; delicatessens; taverns and bars; hotels (transient), motels (transient), recreational vehicles, and other temporary lodging with an average length of stay less than 30 days; athletic, exercise and health clubs or gyms; bowling alleys, skating rinks, game arcades; pool halls; dance halls, studios, and schools; theaters; indoor firing ranges, miniature golf facilities, golf courses, and driving ranges.

*(Amended by Ordinance No. 2142 (11-14-18).)*

v. Repair-oriented: Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop off; quick printing; recycling drop-off; tailor; locksmith; and upholsterer.

c. Exceptions.

i. Lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation are classified as Wholesale Sales.

ii. The sale of landscape materials, including bark chips and compost not in conjunction with a primary retail use, is classified as Industrial Service.

iii. Repair and service of consumer motor vehicles, motorcycles, and light and medium trucks is classified as Vehicle Repair. Repair and service of industrial vehicles and equipment, and heavy trucks is classified as Industrial Service.

iv. Sales, rental, or leasing of heavy trucks and equipment is classified as Wholesale Sales.

v. When kennels are limited to boarding, with no breeding, the applicant may choose to classify the use as Retail Sales and Service.



vi. Camping for a fee is limited to Recreation Vehicle Parks or public zoned property where identified in a city or state parks master plan.

vii. Recreational Vehicle Parks are subject to the standards set forth in Section 14.06.060.

viii. Uses where unoccupied recreational vehicles are offered for sale or lease, or are stored, are not included as a Recreational Vehicle Park.

*Staff: Clarifies that camping for a fee is limited to Recreational Vehicle Parks and public parks where identified in a city or state parks master plan. This codifies existing practice. The only tent camping area inside the City limits is located in South Beach State Park.*

### 3. Major Event Entertainment

- a. Characteristics. Major Event Entertainment uses are characterized by spectator or participatory entertainment and recreational activities, either indoors or outdoors, that draw large numbers of people to specific events or shows.
- b. Examples. Examples include fairgrounds, sports complexes, ball fields, exhibition and meeting areas, coliseums or stadiums, equestrian centers and animal arenas, outdoor amphitheaters and theme or water parks.
- c. Exceptions.
  - i. Exhibition and meeting areas with less than 20,000 square feet of total event area are classified as Sales Oriented Retail Sales or Service.
  - ii. Banquet halls that are part of hotels or restaurants are accessory to those uses.

### 4. Self-Service Storage

- a. Characteristics. Self-Service Storage uses provide separate storage areas for individual or business

uses. The storage areas are designed to allow private access by the tenant for storing personal property.

- b. Examples. Examples include single story and multistory facilities that provide individual storage areas for rent. These uses are also called mini warehouses.
- c. Exceptions. A transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred is in the Warehouse and Freight Movement category.

#### 5. Vehicle Repair

- a. Characteristics. Firms servicing passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed.
- b. Examples. Examples include vehicle repair, transmission or muffler shop, auto body shop, alignment shop, auto upholstery shop, auto detailing, and tire sales and mounting.
- c. Exceptions.
  - i. Repair and service of industrial vehicles and equipment, and of heavy trucks; towing and vehicle storage; and vehicle wrecking and salvage are classified as Industrial Service.

#### 6. Parking Facility

- a. Characteristics. Parking facilities provide parking for vehicles as the primary use. The Parking Facility use category does not include parking that is required for a primary use. A fee may or may not be charged to park at a facility.
- b. Examples. Short and long term fee parking facilities, commercial district shared parking lots, commercial shuttle parking, and park-and-ride lots.

c. Exceptions.

- i. Required parking that is accessory to a use is not considered a Parking Facility.

D. Industrial Use Categories

1. Contractors and Industrial Service

a. Characteristics. Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.

b. Examples. Examples include welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage or wrecking of heavy machinery, metal, and building materials; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; tire re-treading or recapping; truck stops; building, heating, plumbing or electrical contractors; printing, publishing and lithography; exterminators; recycling operations; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; research and development laboratories; dry-docks and the repair or dismantling of ships and barges; laundry, dry-cleaning, and carpet cleaning plants; and photofinishing laboratories.

c. Exceptions.

- i. Contractors and others who perform Industrial Services off-site are included in the Office category, if equipment and materials are not stored at the site, and fabrication or similar work is not carried on at the site.

- ii. Hotels, restaurants, and other services that are part of a truck stop are considered accessory to the truck stop.

## 2. Manufacturing and Production

- a. Characteristics. Manufacturing and Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site. Manufacturing and production activities within heavy commercial or light industrial areas are those that do not produce excessive noise, dust, vibration, or fumes.
- b. Examples. Examples include uses from the two subgroups listed below:
  - i. Light Manufacturing: Industrial uses that do not generate excessive noise, dust, vibration or fumes, such that they can be located near residential and commercial zones without creating nuisance impacts. Uses include processing of food and related products where the materials and processing activities are wholly contained within a structure, such as bakery products, canned and preserved fruits and vegetables, sugar and confectionary products, and beverages; catering establishments; breweries, distilleries, and wineries; manufacture of apparel or other fabricated products made from textiles, leather or similar materials; woodworking, including furniture and cabinet making; fabrication of metal products and fixtures; manufacture or assembly of machinery, equipment, or instruments, including industrial, commercial, and transportation equipment, household items, precision items, photographic, medical and optical goods, artwork, jewelry, and toys;

manufacture of glass, glassware, and pressed or blown glass; pottery and related products; printing, publishing and lithography production; sign making; and movie production facilities.

- ii. Heavy Manufacturing: Industrial uses that should not be located near residential areas due to noise, dust, vibration or fumes that may be generated by the activities. Uses include processing of food and related products where some portion of the materials are stored or processed outdoors, such as dairies, slaughter houses, or feed lots; leather tanning and finishing; weaving or production of textiles; lumber mills, pulp and paper mills, and other wood products manufacturing; production of chemicals, rubber, structural clay, concrete, gypsum, plaster, bone, plastic, or stone products; primary metal industries including blast furnaces, foundries, smelting, and rolling and finishing of metal products; production and refinement of fossil fuels; concrete batching; and asphalt mixing; and manufacturing of prefabricated structures, including mobile homes.
  - c. Exceptions.
    - i. Manufacturing of goods to be sold primarily on-site and to the general public is classified as Retail Sales and Service.
    - ii. Manufacture and production of goods from composting organic material is classified as Waste-Related uses.
3. Warehouse, Freight Movement, and Distribution
- a. Characteristics. Warehouse, Freight Movement, and Distribution involves the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.

- b. **Examples.** Examples include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; storage of weapons and ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus barns; parcel services; major post offices; grain terminals; and the stockpiling of sand, gravel, or other aggregate materials.
- c. **Exceptions.**
  - i. Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste and Recycling Related uses.
  - ii. Mini-warehouses are classified as Self-Service Storage uses.

#### 5. Waste and Recycling Related

- a. **Characteristics.** Uses that receive solid or liquid wastes from others for disposal on the site or transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the decomposition of organic material. Waste related uses also include uses that receive hazardous wastes from others.
- b. **Examples.** Examples include sanitary landfills, limited use landfills, waste composting, energy recovery plants, sewer treatment plants, portable sanitary collection equipment storage and pumping, and hazardous waste collection sites.
- c. **Exceptions.**
  - i. Disposal of clean fill, as defined in OAR 340-093-0030, is considered fill, not a Waste and Recycling Related use.
  - ii. Sewer pipes that serve a development are considered a Basic Utility.

#### 6. Wholesale Sales

- a. **Characteristics.** Wholesale Sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way in which the firm operates. Products may be picked up on site or delivered to the customer.
  - b. **Examples.** Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware, and office supplies.
  - c. **Exceptions.**
    - i. Firms that engage primarily in sales to the general public are classified as Retail Sales and Service.
    - ii. Firms that engage in sales on a membership basis are classified as consideration of characteristics of the use.
    - iii. Firms that are primarily storing goods with little on-site business activity are classified as Warehouse, Freight Movement, and Distribution.
1. **Mining**
- a. **Characteristics.** Include mining or extraction of mineral or aggregate resources from the ground for off-site use.
  - b. **Examples.** Examples include sand and gravel extraction, excavation of rock, and mining of non-metallic minerals.
  - c. **Exceptions.**



- i. All other forms of mining or extraction of earth materials are prohibited.

## **E. Institutional and Civic Use Categories**

### **1. Basic Utilities and Roads**

- a. **Characteristics.** Basic utilities and Roads are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility and Road uses generally do not have regular employees at the site. Services may be public or privately provided.
- b. **Examples.** Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; water quality and flow control devices. Water conveyance systems; stormwater facilities and conveyance systems; telephone exchanges; suspended cable transportation systems; bus stops or turnarounds; local, collector and arterial roadways; and highway maintenance.
- c. **Exceptions.**
  - i. Services where people are generally present, other than bus stops or turnarounds, are classified as Community Services or Offices.
  - ii. Utility offices where employees or customers are generally present are classified as Offices.
  - iii. Bus barns are classified as Warehouse and freight movement.
  - iv. Public or private passageways, including easements for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or other similar services on a regional level are classified as Utility Corridors.

### **2. Utility, Road and Transit Corridors**

- a. **Characteristics.** Utility, Road and Transit Corridors include public or private passageways, including

easements for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or similar services on a regional level. This category includes new or expanded regional roadways, and tracks and lines for the movement of trains.

- b. Examples. Examples include highways, rail trunk and feeder lines; regional electrical transmission lines; and regional gas and oil pipelines.
- c. Exceptions.
  - i. Highways, rail lines and utility corridors that are located within motor vehicle rights-of-way are not included.

### 3. Community Services

- a. Characteristics. Public, non-profit or charitable organizations that provide local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. Services are ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join. Uses may include shelter or housing for periods of less than one month when operated by a public or non-profit agency. Uses may also provide special counseling, education, or training of a public, nonprofit or charitable nature.
- b. Examples. Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, police stations, religious institutions/places of worship, fire and ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, soup kitchens, and surplus food distribution centers.

*Staff: Religious institutions/places of worship fit the characteristics and are treated as a community service use. This change simply adds them as an example for clarity.*

c. Exceptions.

- i. Private lodges, clubs, and private commercial athletic or health clubs are classified as Entertainment and Recreation. Commercial museums (such as a wax museum) are in Retail Sales and Service.

4. Daycare

- a. Characteristics. Daycare use includes day or evening care of more than 12 children under the age of 13 outside of the children's homes, with or without compensation. Daycare uses also include the daytime care of teenagers or adults who need assistance or supervision.

- b. Examples. Pre-schools, nursery schools, latch key programs, and adult daycare programs.

c. Exceptions.

- i. Daycare use does not include care given by a "Child Care Facility" as defined by ORS 657A.250 if the care is given to 12 or fewer children at any one time including the children of the provider. Child care facilities are located in the provider's home and are permitted as a home occupation in non-residential districts.

5. Educational Institutions

- a. Characteristics. Educational Institutions provide educational instruction to students. This category includes schools, colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree, and public and private schools at the primary, elementary, middle, junior, high, or high school level that provide state-mandated basic education. This category also includes trade schools and vocational schools that provide on-site training of trade skills.

- b. Examples. Types of uses include universities, liberal arts colleges, community colleges, nursing and medical schools not accessory to a hospital, seminaries, public and private daytime schools,

boarding schools, military academies, and trade/vocational schools.

c. Exceptions.

i. Preschools are classified as Daycare facilities.

6. Hospitals

a. Characteristics. Hospitals provide medical and surgical diagnosis and care to patients and offer overnight care. Hospitals tend to be on multiple blocks or in campus settings.

b. Examples. Examples include hospitals and medical complexes that include hospitals or emergency care facilities.

c. Exceptions.

i. Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are "Residential Facilities" and permitted in R-3 and R-4 zoning districts.

ii. Medical clinics that provide care where patients are generally not kept overnight are classified as Office.

7. Courts, Jails, and Detention Facilities

a. Characteristics. Includes facilities designed to try, detain or incarcerate persons while being processed for arrest or detention by law enforcement. Inmates or detainees are under 24-hour supervision by sworn officers.

b. Examples. Examples include courts, prisons, jails, probation centers, juvenile detention homes.

c. Exceptions.

i. Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of

the program, are "Residential Facilities" and permitted in R-3 and R-4 zoning districts.

- ii. Programs that provide transitional living experience for former offenders, such as halfway houses, where sworn officers do not supervise residents, are also "Residential Facilities" and permitted in R-3 and R-4 zoning districts.

8. Communication Facilities

- a. Characteristics. Includes facilities designed to provide signals or messages through the use of electronic and telephone devices. Includes all equipment, machinery, structures (e.g. towers) or supporting elements necessary to produce signals.
- b. Examples. Examples include broadcast towers, communication/cell towers, and point to point microwave towers.
- c. Exceptions.
  - i. Receive only antennae are not included in this category.
  - ii. Radio and television studios are classified in the Office category.
  - iii. Radio Frequency Transmission Facilities that are public safety facilities are classified as Basic Utilities.

14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.

"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

		C-1	C-2*	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X

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2.	<b>Retails Sales and Service</b>						
	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P**	P	P	C	X
	e. Repair-oriented	P	X	P	P	P	X
3.	<b>Major Event Entertainment</b>	C	C	P	P	C	X
4.	<b>Vehicle Repair</b>	X	X	P	P	P	X
5.	<b>Self-Service Storage</b>	X	X	P	P	P	X
6.	<b>Parking Facility</b>	P	P	P	P	P	P
7.	<b>Contractors and Industrial Service</b>	X	X	P	P	P	P
8.	<b>Manufacturing and Production</b>						
	a. Light Manufacturing	X	X	C	P	P	P
	b. Heavy Manufacturing	X	X	X	X	C	P
9.	<b>Warehouse, Freight Movement, &amp; Distribution</b>	X	X	P	P	P	P
10.	<b>Wholesale Sales</b>	X	X	P	P	P	P
11.	<b>Waste and Recycling Related</b>	C	C	C	C	C	C
12.	<b>Basic Utilities and Roads</b>	P	P	P	P	P	P
13.	<b>Utility, Road and Transit Corridors</b>	C	C	C	C	C	C
14.	<b>Community Service</b>	P	C	P	P	C	X
15.	<b>Daycare Facility</b>	P	C	P	P	P	X
16.	<b>Educational Institutions</b>						
	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
17.	<b>Hospitals</b>	C	C	C	X	X	X
18.	<b>Courts, Jails, and</b>	X	X	P	C	X	X

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	Detention Facilities						
19.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
20.	Communication Facilities	P	X	P	P	P	P
21.	Residences on Floors Other than Street Grade	P	P*	P	X	X	X

*\*Uses in excess of 2,000 square feet of gross floor area are Conditional Uses within the Historic Nye Beach Design Review District. Residential Uses within the Historic Nye Beach Design Review District are subject to limitations as set forth in NMC Chapter 14.30.*  
*\*\* Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.*

**14.03.080 Water-dependent and Water-related Uses.**

The following list sets forth the uses allowed with the water-dependent and water-related land use classifications. Uses not identified herein are not allowed.

"P" = Permitted uses.

"C" = Conditional uses permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		W-1	W-2
1.	Aquaculture	P	P
2.	Boat Rentals, Sport Fishing and Charter Boat Services	P	P
3.	Docks, Wharves, Piers	P	P
4.	Dry Dock, Boat Repair, Marine Service, and Marine Railway Facilities	P	P
5.	Fuel Facilities for Boats or Ships	P	P
6.	Marinas and Port Facilities	P	P
7.	Seafood Processing and Packaging Plants	P	P
8.	Terminal Facilities for Loading and Unloading Ships and Barges	P	P
9.	Marine Research and Education Facilities of Observation, Sampling, Recording, or Experimentation on or Near the Water	P	P
10.	Ice Production and Sales, Refrigeration Repair, and Cold Storage to Serve the Seafood Industry	C	P
11.	Boat Building and Marine Equipment Manufacture	C	P
12.	Parking Lots	C	P



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13.	Warehouses	C	P
14.	Uses Allowed in the Adjacent Estuarine Management Unit	C	P
15.	Water-dependent Uses That Meet the Intent of the W-1 District	C	P
16.	Bait, Tackle, and Sporting Goods Stores Specializing in Water-related Merchandise	X	P
17.	Seafood Markets	X	P
18.	Uses Permitted Outright in a C-2 District	X	C
19.	Manufacturing in Conjunction with Uses X C Permitted Outright in a C-2 District	X	C
20.	Offices Not On the Ground Floor of an Existing Building	X	C
21.	Residences on Floors Other than Street Grade	X	C

*(Sections 14.03.070 and 14.03.080 adopted by Ordinance No. 2125, adopted on December 4, 2017; effective January 3, 2018.)*

14.03.090 Uses in State Park Master Plans.

\* Where the W-1 and/or W-2 zones are applied to properties that are owned or managed by the Oregon Parks and Recreation Department within a state park with a master plan that has been approved by the City of Newport, only those uses that are consistent with the city's approval of the master plan are permitted. Such uses are permitted through the applicable development review procedures set forth in this ordinance provided that the uses comply with the design standards in the master plan and with other applicable standards.

14.03.100 Public Uses

. The following list sets forth the uses allowed within the public land use classification. Uses not identified herein are not allowed.

"P" = Permitted Uses.

"C" = Conditional uses; permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		P-1	P2	P-3
1.	Public Parks	P	P	P
2.	Public Open Space	P	P	P
3.	Public Schools, Colleges, or Universities	P	X	X
4.	Any Building or Structure Erected by a Governmental Entity	P	X	X
5.	Community Buildings	P	X	X
6.	Fairgrounds	P	X	X

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7.	Public Cemeteries	P	P	X
8.	Water & Wastewater Treatment Plants	P	X	X
9.	Performing Arts Centers	P	X	X
10.	Visual Arts Centers	P	X	X
11.	Senior Centers	P	X	X
12.	Airport and Accessory Structures	P	X	X
13.	Public Golf Courses	P	P	X
14.	City Halls	P	X	X
15.	County Courthouses	P	X	X
16.	Jails and Juvenile Detention Facilities	P	X	X
17.	City or County Maintenance Facilities	P	X	X
18.	Publicly Owned Recreational Vehicle Parks	C	C	X
19.	Public Museums	P	X	X
20.	Public Restrooms	P	P	X
21.	Recreation Equipment	P	P	X
22.	Post Office	P	X	X
23.	Parking Lots	P	P	X
24.	Public Hospitals	P	X	X
25.	Trails, paths, bike paths, walkways, etc.	P	P	P
26.	Water Storage Facilities	P	X	X
27.	Public Libraries	P	X	X
28.	Fire Stations	P	X	X
29.	Police Stations	P	X	X
30.	Accessory Structures for Any of the Above	P	P	P

*\*Added by Ordinance No. 1858 (9-2-03).*

**14.03.110 Uses in State Park Master Plans.\***

Where the P-1, P-2, and/or P-3 zones are applied to properties that are owned or managed by the Oregon Parks and Recreation Department within a state park with a master plan that has been approved by the City of Newport, only those uses that are consistent with the city's approval of the master plan are permitted. Such uses are permitted through the applicable development review procedures set forth in this ordinance provided that the uses comply with the design standards in the master plan and with other applicable standards.

*\*Added by Ordinance No. 1858 (9-2-03).*

(Deleted language shown in ~~strikethrough~~ and language to be added is depicted with a double underline. Staff comments are in *italics*.)

## CHAPTER 14.06 MANUFACTURED DWELLINGS AND RECREATIONAL VEHICLES

### 14.06.010 Purpose

The purpose of this section is to provide criteria for the placement of manufactured dwellings and recreational vehicles within the City of Newport. It is also the purpose of this section to provide for dwelling units other than site-built structures.

### 14.06.020 Manufactured Dwellings on Individual Lots

- A. In addition to the uses permitted in the underlying zone, a single manufactured dwelling may be placed on an individual lot or parcel in any residential district where single-family residences are allowed subject to the following provisions:
1. Conform to the definition of a manufactured dwelling in Section 14.01.010 of this Code.
  2. Have the wheels and tongue or hitch removed.
  3. Be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.
  4. Have a pitched roof of at least two and one half feet for each 12 feet in width and be provided with gutters and down-spouts consistent with the standards contained in the current State of Oregon amended Council of American Building Officials.
  5. Have exterior siding and roofing which, in color, material, and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on adjacent dwellings as determined by the Building Official.

6. Have a garage or carport constructed of like materials if an adjacent lot or parcel is developed with a dwelling that has a garage or carport.
  7. Be multisectional and enclose a space of not less than 1,000 square feet as determined by measurement of exterior dimensions of the unit. Space within accessory structures, extensions, or additions shall not be included in calculating space.
  8. Be connected to the public water system and an approved sewage disposal system.
  9. Be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.
- B. A manufactured dwelling constructed in accordance with current Federal Manufactured Home Construction and Safety Standards that does not meet criteria listed in subsection (A), may be approved by the Planning Commission as a Conditional Use pursuant to [Section 14.33](#) of this Ordinance. Requests of this nature shall be reviewed under a Type III decision making process consistent with [Section 14.52](#), Procedural Requirements.

*(\* Entire section amended by Ordinance No. 1641 (8-3-92) and replaced in its entirety by Ordinance No. 2008 (12-2-2010).)*

#### 14.06.030 [Manufactured Dwelling Park Standards](#)

Manufactured dwelling parks may only be allowed in the R-2, R-3, and R-4 zoning districts, subject to the development standards contained in this section.

#### 14.06.040 [Manufactured Dwelling Parks](#)

Manufactured dwelling parks are permitted subject to the following:

- A. Construction of the manufactured dwelling park and placement of manufactured dwellings shall comply with the Oregon Manufactured Dwelling and Park Specialty Code, 2002 Edition, as amended.

- B. Streets within the manufactured dwelling park shall adhere to the standards outlined in Newport Municipal Code [Chapter 13.05.040](#) where the construction or extension of such street is identified in the City of Newport Transportation System Plan.
- C. The maximum density allowed in a manufactured dwelling park is one unit for every 2,500 sq. ft. of lot area in the R-2 zoning district and one unit for every 1,250 sq. ft. of lot area in R-3 and R-4 zoning districts.
- D. Recreational vehicles may be occupied as a residential unit provided they are connected to the manufactured dwelling parks water, sewage, and electrical supply systems. In such cases, the recreational vehicles shall be counted against the density limitations of the zoning district.
- E. Any manufactured dwelling park authorized under this section shall have a common outdoor area of at least 2,500 sq. ft. or 100 sq. ft. per unit, whichever is greater. Common outdoor areas shall be landscaped and available for the use of all park residents.
- F. If the park provides spaces for 50 or more manufactured dwelling units, each vehicular way in the park shall be named and marked with signs that are similar in appearance to those used to identify public streets. A map of the vehicular ways shall be provided to the fire department for appropriate naming.
- G. Public fire hydrants shall be provided within 250 feet of manufactured dwelling spaces or permanent structures within the park. If a manufactured dwelling space or permanent structure in the park is more than 250 feet from a public fire hydrant, the park shall have water supply mains designed to serve fire hydrants. Each hydrant within the park shall be located on a vehicular way and shall conform in design and capacity to the public hydrants in the city.
- H. The manufactured dwelling park may have a community or recreation building and other similar amenities.
- I. All dead end streets shall provide an adequate turn around for emergency vehicles.

#### 14.06.050 Recreational Vehicles: General Provisions

A. Recreational vehicles may be stored on property within the City of Newport provided they are not used as a place of habitation while so stored unless the recreational vehicle is located within: ~~a manufactured dwelling park or recreational vehicle park, or is authorized as a temporary living quarters pursuant to NMC Chapter 14.9.~~

1. A manufactured dwelling or recreational vehicle park; or

2. A local or state park where authorized in an adopted parks master plan; or

3. A property where the recreational vehicle is authorized as temporary living quarters pursuant to Chapter 14.09; or

4. An area where camping is permitted pursuant to Section 9.50.050(A)(2) through 9.50.050(A)(4).

B. Removal of the wheels or placement of a recreational vehicle on a permanent or temporary foundation shall not change the essential character of any recreational vehicle or change the requirements of this section.

C. It shall be unlawful for any person occupying or using any recreational vehicle within the City of Newport to discharge wastewater unless connected to a public sewer or an approved septic tank in accordance with the ordinances of the City of Newport relating thereof. All recreational vehicle parks within the City of Newport shall comply with the sanitary requirements of the City of Newport and the State of Oregon.

*Staff: This change identifies circumstances where a Recreational Vehicle can be occupied as a place of habitation within the city limits.*

*(Chapter 14.06.040 and 14.06.050 were enacted by Ordinance No. 2059, adopted on September 3, 2013; effective October 3, 2013.)*

#### 14.06.060 Recreational Vehicle Parks

Recreational vehicle parks are allowed conditionally in an R-4 or I-2 zone district, and conditionally if publicly owned in the



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P-1 and P-2 zoning districts (excluding those P-1 properties within the Historic Nye Beach Design Review District), subject to subsections A through D below and in accordance with [Section 14.52](#), Procedural Requirements. Recreational vehicle parks are allowed outright in C-1, C-2, C-3, ~~and I-1;~~ ~~and I-2~~ zoning districts (excluding those C-2 properties within the Historic Nye Beach Design Review District), subject to the subsections A through D as follows:

*Staff: Recreational Vehicle Parks are defined in Chapter 14.03 as an entertainment-oriented, retail sales and service commercial use. That type of use is conditional in I-2 zone districts, and this change is intended to ensure that the two chapters are consistent.*

- A. The park complies with the standards contained in state statutes and the Oregon Administrative Rules.
- B. The developer of the park obtains a permit from the state.
- C. The developer provides a map of the park to the City Building Official.
- D. The park complies with the following provisions (in case of overlap with a state requirement, the more restrictive of the two requirements shall apply):
  1. The space provided for each recreational vehicle shall not be less than 600 square feet, exclusive of any space used for common areas (such as roadways, general use structures, walkways, parking spaces for vehicles other than recreational vehicles, and landscaped areas). The number of recreational vehicles shall be limited to a maximum of 22 per gross acre.
  2. Roadways shall not be less than 30 feet in width if parking is permitted on the margin of the roadway or less than 20 feet in width if parking is not permitted on the edge of the roadway, they shall be paved with asphalt, concrete, or similar impervious surface and designed to permit easy access to each recreation vehicle space.
  3. A space provided for a recreational vehicle shall be covered with crushed gravel or paved with asphalt, concrete, or similar material and be designed to

provide run-off of surface water. The part of the space which is not occupied by the recreational vehicle, not intended as an access way to the recreation vehicle or part of an outdoor patio, need not be paved or covered with gravel provided the area is landscaped or otherwise treated to prevent dust or mud.

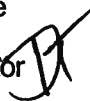
4. A recreational vehicle space shall be provided with piped potable water and sewage disposal service. A recreational vehicle staying in the park shall be connected to the water and sewage service provided by the park if the vehicle has equipment needing such service.
5. A recreational vehicle space shall be provided with electrical service.
6. Trash receptacles for the disposal of solid waste materials shall be provided in convenient locations for the use of guests of the park and located in such number and be of such capacity that there is no uncovered accumulation of trash at any time.
7. The total number of off-street parking spaces in the park shall be provided in conformance with [Section 14.14.030](#). Parking spaces shall be covered with crushed gravel or paved with asphalt, concrete, or similar material.
8. The park shall provide toilets, lavatories, and showers for each sex in the following ratios: For each 15 recreational vehicle spaces, or any fraction thereof, one toilet (up to 1/3 of the toilets may be urinals), one lavatory, and one shower for men; and one toilet, one lavatory, and one shower for women. The toilets and showers shall afford privacy, and the showers shall be provided with private dressing rooms. Facilities for each sex shall be located in separate buildings, or, if in the same building, shall be separated by a soundproof wall.
9. The park shall provide one utility building or room containing one clothes washing machine, and one clothes drying machine for each ten recreational vehicle spaces, or any fraction thereof.



10. Building spaces required by Subsection 9 and 10 of this section shall be lighted at all times of the night and day, shall be ventilated, shall be provided with heating facilities which shall maintain a room temperature of at least 62°F, shall have floors of waterproof material, shall have sanitary ceilings, floor and wall surfaces, and shall be provided with adequate floor drains to permit easy cleaning.
11. Except for the access roadway into the park, the park shall be screened on all sides by a sight-obscuring hedge or fence not less than six feet in height unless modified through either the conditional use permit process (if a conditional use permit is required for the RV park) or other applicable land use procedure. Reasons to modify the hedge or fence buffer required by this section may include, but are not limited to, the location of the RV park is such that adequate other screening or buffering is provided to adjacent properties (such as the presence of a grove or stand of trees), the location of the RV park within a larger park or development that does not require screening or has its own screening, or screening is not needed for portions not adjacent to other properties (such as when the RV park fronts a body of water). Modifications to the hedge or fence requirement of this subsection shall not act to modify the requirement for a solid wall or screening fence that may otherwise be required under [Section 14.18.020](#) (Adjacent Yard Buffer) for non-residentially zoned property abutting a residentially zoned property.
12. Except for vehicles, there shall be no outside storage of materials or equipment belonging to the park or to any guest in the park.
13. Evidence shall be provided that the park will be eligible for a certificate of sanitation as required by state law.

# Memorandum

To: Planning Commission/Commission Advisory Committee

From: Derrick I. Tokos, AICP, Community Development Director 

Date: August 6, 2020

Re: Review of League of Oregon Cities Model Ordinance and Design Guidelines for Small Wireless

Enclosed are copies of a new model ordinance and model design guidelines for small wireless facilities, developed by the League of Oregon Cities ("League") in partnership with municipal and industry stakeholders. A list of the specific participants is included under "Acknowledgements" at page 16 of the ordinance. The model ordinance and model design guidelines provide a roadmap for local jurisdictions to comply with a 2018 Federal Communication's Commission ("FCC") ruling designed to accelerate deployment of broadband by reducing or removing regulatory barriers to infrastructure investment.

The City of Newport's regulation of wireless facilities within public rights-of-way is principally limited to what is negotiated in franchise agreements (ref: NMC Chapter 9.05), a regulatory framework that does not address many of the issues identified in the FCC ruling. For private property, the City regulates wireless infrastructure as a "Communication Facilities," permitted in C-1, C-3, I-1, I-2, I-3 and P-1 zone districts. They are not permitted in residential, tourist-commercial, or water-related/water-dependent zones. Other than these basic siting limitations the only other land use regulations pertain to tower height, with structures being limited to 100-feet in height in P-1, C-1, and C-3 zones and 150-feet in height in industrial areas. These regulations were adopted prior to the advent of small cell technology and do not address substantive or procedural elements of the FCC's current rulings related to small cell and non-small cell wireless facilities.

In February of this year, the City Council received testimony from a number of individuals interested in seeing the City update its regulations related to wireless facilities. Some of the testimony was directed at potential human health impacts of wireless facilities, which is an arena where the federal government prohibits local government regulation (47 USC §332(c)(7)). Other comments were directed at issues local governments can regulate, a number of which are summarized in a February 2020 email from Mona Linstromberg (enclosed). The Council was aware that the League was working on a model ordinance and, after considering the testimony, there was general agreement that the City should evaluate its wireless regulations once the model ordinance was released. At a minimum, this process needs to address mandatory procedural and substantive provisions of the law. It is also an opportunity for the City to adopt other permissible regulations. This work session is an introduction of the topic and opportunity for Planning Commission members to ask questions about the model ordinance/guidelines or other related matters, and to discuss issues that should be addressed as part of the process. Shortly before the League released the model ordinance, the FCC issued a declaratory ruling clarifying aspect of its prior orders. A copy of the League's summary of that ruling is enclosed. Full copies of the FCC's recent rulings are not enclosed but can be accessed at: <https://www.orcities.org/resources/communications/bulletin/fcc-passes-new-wireless-siting-rules>

### Attachments

League of Oregon Cities Small Wireless Facilities Model Ordinance, June 2020  
 League of Oregon Cities Small Wireless Facilities Model Design Guidelines, June 2020  
 String of emails from Mona Linstromberg and others, dated February 2020  
 LOC summary of FCC's June 9, 2020 Declaratory Ruling

**MODEL**



# Small Wireless Facilities Model Ordinance

JUNE 2020

This model was produced in coordination with:



## **DISCLAIMER**

Any model document provided by the League of Oregon Cities (LOC) is intended to be used as a starting point in an individual city's development of its own documents. Each city is unique, and any adopted document or policy should be individually tailored to meet a city's unique needs. Furthermore, this model is not intended to be a substitute for legal advice. Cities should consult with their city attorney before adopting any small wireless facility policies to ensure that they comply with all aspects of federal, state, and local law.

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## Foreword

### Background

On January 31, 2017, Federal Communications Commission (“FCC”) Chairman Ajit Pai established a Broadband Deployment Advisory Committee (BDAC), which he tasked with making recommendations to the FCC on ways to accelerate the deployment of broadband by reducing or removing regulatory barriers to infrastructure investment. On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order ([FCC 18-133](#), referred throughout the document as “Small Cell Order” or “FCC Order”) that significantly limits local authority over small wireless infrastructure deployment and fees for use of the rights-of-way (ROW). The FCC Order took effect January 14, 2019. The FCC order defines the size limitations for small wireless facilities (allowing antennas of up to 3 cubic feet each, with additional equipment not to exceed 28 cubic feet), and specifies that such facilities may not result in human exposure to radiofrequency radiation in excess of applicable standards in the FCC’s rules (federal statute preempts local regulation of RF emissions). “Small wireless facilities” are sometimes also called “small cells”. Throughout the model code, it is noted when language is mirrored in the FCC order.

### LOC Model Small Wireless Facilities Code

In coordination with many cities,<sup>1</sup> representatives from Verizon, AT&T, T-Mobile, and the LOC met from January 2019 to May 2020 to discuss and craft a model code, model design standards relating to small wireless facilities while there is pending litigation<sup>2</sup> on the FCC Order. The model code and model design standards are intended to be paired together.

There is no model that will work for every jurisdiction. As such, the LOC’s model is intended as a roadmap to assist local governments in adopting their code. While example language is included in the sections, the LOC does not intend to suggest these examples could work for every jurisdiction.

The LOC also recognizes there are many ways to structure a code. The appropriate structure will vary by jurisdiction. The intent is to allow each jurisdiction to draft the substantive provisions that best reflect local needs and interests. The LOC recommends that jurisdictions that own poles or other structures in the rights-of-way establish a clear code for small wireless facilities. The circumstances of each municipality may, and likely will, require modifications to the framework and/or example language of this model code.

### Placement Within Local Codes

Although many communities have historically handled wireless facility siting through the land use process, new FCC regulations effectively prohibit these procedures. As explained below, the most practicable location for small wireless facility regulations may be the city’s streets and highways code rather than its land development code.

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<sup>1</sup> See “Acknowledgements” section for full list of participants.

<sup>2</sup> In October 2018, the LOC in coordination with other municipalities and municipal leagues filed suit against the FCC in the U.S. Ninth Circuit Court of Appeals.

Oregon state law requires at least one hearing on a land use decision – either in the initial determination or as an appeal if the initial determination is made without a hearing. These hearings necessarily require advance public notice, which can add between 10 and 20 days to the review process.

However, the new shot clock regulations are not only shorter but encompass all appeals related to the small wireless facility application. The phrase “shot clock” refers to the presumptively reasonable time frame in which the state or local government should act on a request for authorization to place, construct, or modify personal wireless service facilities, as defined by the FCC. The shot clock is 60 days for small wireless facilities on any existing structure and 90 days for small wireless facilities on new structures. See Appendix A for current shot clocks. Moreover, the FCC allows for “batched applications” with multiple requests for authorization filed at the same time. It is simply not practicable to comply with the state’s land use requirements and the FCC’s regulations at the same time.

As a result, the current best practice is to place new regulations for small wireless facilities within the public rights-of-way in the city’s streets and highways code rather than its land development code. For those communities with existing regulations in their land development codes, an amendment to exempt small wireless facilities in the public rights-of-way from the land development code (and pointing the reader to the streets and highways code) will also be needed. Given that the process to amend a land development code is also a lengthy undertaking, interim regulations administered by the city engineer or public works director may be appropriate.

### **ROW Franchise and License Considerations**

The model code provisions are not intended to replace local regulations for ROW franchising and licensing. In most cases, a small wireless facility provider will need both a permit to construct the small wireless facility and a franchise or license to use the public ROW for the provision of communication services.

However, cities should note that certain aspects of the FCC’s new regulations will impact the applicability of existing franchise or license requirements to small wireless facilities. For example, the FCC restricts the annual recurring fees for access to the ROW to the reasonable approximation of the direct costs created by the small wireless facility. Although not expressly preempted, the FCC suggests that gross-revenue fees are likely to exceed this limitation.

Accordingly, cities should carefully examine their franchising or licensing requirements when they consider code amendments for small wireless facilities.

### **Additional Considerations**

The LOC model code only applies to small wireless facilities. Municipalities should review their existing ordinances, standards and policies to determine if this framework is appropriate. Municipalities may want to consider whether it would be preferable to adopt a utility-neutral code covering all utilities and communications providers. Differences in policy choices and existing standards, among other things, may impact the decision in how to proceed. It is recommended that cities consult their attorney, right-of-way specialists, engineers, master plans,

comprehensive plans, goals and/or wireless providers before final adoption of this code.

### **Understanding the Organization of the Model Code**

As stated above, the model is best described as an outline or roadmap to assist municipalities in drafting the appropriate code for their community. The model includes example language to illustrate the intent of the section. The example language, or a variation thereof, may be appropriate for final adoption in some jurisdictions.

Finally, there may be additional notes or issues for consideration within the subsections of the model, which are [bracketed] and in ALL CAPS. These notes are intended as guidance for municipal drafters, not for adoption in a final ordinance.



## Small Wireless Facility Model Ordinance

### AN ORDINANCE ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE CITY OF \_\_\_\_\_

#### Preamble

WHEREAS, the City of \_\_\_\_\_ (“City”) desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are needed to deliver wireless access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the City; and

WHEREAS, the City recognizes that the wireless industry needs small wireless facilities, including facilities commonly referred to as small cells, deployed in the public rights-of-way; and

WHEREAS, the City further recognizes that the City must balance the benefits from small cell infrastructure with its aesthetic impact on the community in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City’s historic and environmental resources to the extent feasible; and

WHEREAS, the City intends to adopt a new code consistent with local, state and federal laws, standards and requirements.

NOW, THEREFORE, BE IT ORDAINED by the \_\_\_\_\_ that Title \_\_\_\_\_ of the Municipal Code of the City of \_\_\_\_\_ shall be amended by adding the following Chapter \_\_\_\_\_ that will read as follows:

#### Section 1 – Purpose and Scope

[NOTE: THIS SECTION SHOULD BE CONSISTENT WITH EXISTING ROW ORDINANCES.]

- (A) Purpose. The purpose of this Chapter is to establish reasonable and nondiscriminatory policies and procedures for the placement of small wireless facilities in rights-of-way within the City’s jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the City rights-of-way and the City as a whole.
- (B) Intent. In enacting this Chapter, the City is establishing uniform standards consistent

with federal law to address the placement of small wireless facilities and associated poles in the rights-of-way, including without limitation, to manage the public rights-of-way in order to:

- (1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) prevent the creation of obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (4) protect against environmental damage, including damage to trees;
- (5) preserve the character of the community, historic districts or areas with decorative poles; and
- (6) facilitate technology advancements, such as deployment of small wireless facilities, to provide the benefits of wireless services.

[NOTE: IT IS SUGGESTED THAT CITIES REVIEW OTHER CHAPTERS OF CITY CODE TO MAKE SURE THERE IS NO CONFLICT AND CONSIDER WHETHER IT IS APPROPRIATE TO AMEND.]

## **Section 2 - Definitions**

- (A) “Antenna” means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under [47 C.F.R. Part 15](#).
- (B) “Antenna Equipment” means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
- (C) “Antenna Facility” means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.
- (D) “Applicable codes” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.

- (E) “Applicant” means any person who submits an application as or on behalf of a wireless provider.
- (F) “Application” means requests submitted by an applicant (i) for permission to collocate small wireless facilities; or (ii) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required.
- (G) “City Structure” means a structure located in the rights-of-way within the City’s jurisdictional boundaries that is owned, managed or operated by the City or any subdivision or instrumentality thereof, including municipal electric utilities. [Including, but not limited to streetlights, traffic signals, utility poles, building] [Consider excluding certain structures in a new section or in section 8]. [NOTE: THIS DEFINITION RECOGNIZES THAT NOT ALL STRUCTURES OWNED, MANAGED OR OPERATED BY A CITY OR CITY SUBDIVISION OR INSTRUMENTALITY THEREOF ARE LOCATED WITHIN THE SAME CITY’S JURISDICTIONAL BOUNDARIES. FOR EXAMPLE, MONMOUTH POWER & LIGHT SERVES THE CITY OF MONMOUTH AND PORTIONS OF THE CITY OF INDEPENDENCE. TO THE EXTENT THE CITY OF MONMOUTH ADOPTED THIS MODEL CODE, IT COULD NOT ISSUE PERMITS FOR ATTACHMENTS TO STRUCTURES LOCATED WITHIN THE CITY OF INDEPENDENCE. CONVERSELY, THE CITY OF INDEPENDENCE COULD NOT MANDATE ACCESS TO STRUCTURES OWNED BY MONMOUTH POWER & LIGHT.]
- (H) “Collocate” means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. “Collocation” has a corresponding meaning.
- (I) “Day” means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day. [NOTE: DAY IS IN REFERENCE TO FCC SHOT CLOCKS]
- (J) “Decorative pole” means a city structure that is specially designed and placed for aesthetic purposes.
- (K) “Historic district” means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at [47 C.F.R. Part 1, Appendix C](#); or, (2) a locally designated historic district as of the effective date of this Chapter or in a locally

designated historic district existing when an application is submitted. [NOTE: THIS IS NOT MEANT TO RETROACTIVELY AFFECT SWFs ALREADY IN PLACE WHEN A NEW DISTRICT IS CREATED].

- (L) “Permissions” means [list various permits, agreements and licenses needed for SWF deployment].
- (M) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (N) “Pole” means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.
- (O) “Rights-of-Way” or “ROW” means [insert a consistent definition across other codes. Example: “Right-of-way,” “rights-of-way,” “public right-of-way,” or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel.]
- (P) “Routine Maintenance” means inspections, testing, repair, and modifications subject to Section 6409(a) that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and/or the associated pole or structure.
- (Q) “Small wireless facility” means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:
  - (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,
  - (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,
  - (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,

- (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).
- (R) “Structure” means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as a pole, tower, or base station, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).
- (S) “Wireless Infrastructure Provider” means any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, but that is not a wireless services provider.
- (T) “Wireless Provider” means a wireless infrastructure provider or a wireless services provider.
- (U) “Wireless Services Provider” means a person who provides personal wireless services (whether or not it is comingled with other services).

**Section 3 – Permitted Use; Application and Fees**

- (A) Permitted Use. The following uses within the rights-of-way shall be a permitted use, subject to compliance with the city’s applicable design standards [insert cross-reference here], administrative review only and issuance of a permit as set forth in this Chapter:
  - (1) Collocation of a small wireless facility; and,
  - (2) Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility.
- (B) Permissions Required. Except as otherwise provided in this Chapter, no person shall place any small wireless facility described in Section 3(A) in the rights-of-way, without first filing an application for the facility and obtaining [a permit, license, or agreement].
- (C) Application Requirements. [THIS SECTION CAN BE LEFT IN OR HANDLED ADMINISTRATIVELY. NOTE: THE FCC PROVIDES THAT APPLICATION REQUIREMENTS MUST BE IN A PUBLICLY STATED FORMAT. TO THE EXTENT THAT CITIES PREFER TO ADOPT ADMINISTRATIVE APPLICATION REQUIREMENTS, THEY SHOULD BE WRITTEN AS CHECKLISTS, GUIDELINES, WORKSHEETS, AND/OR OTHER HANDOUTS, AND BE MADE PUBLICLY AVAILABLE. AT A MINIMUM, CITIES SHOULD REQUIRE THE FOLLOWING MATERIALS.]

An application filed pursuant to this Chapter shall be made by the wireless provider or its duly authorized representative and shall contain the following:

- (1) The applicant's name, address, telephone number, and e-mail address;
  - (2) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
  - (3) A general description of the proposed small wireless facility and associated pole, if applicable. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
  - (4) Site plans and engineering drawings to scale that identify the proposed small wireless facility.
  - (5) A statement or other demonstration that the small wireless facility shall comply with all applicable codes, regulations and standards, including applicable FCC regulations for human exposure to RF emissions.
  - (6) The application requirements shall not be more burdensome than those for any similarly situated small wireless facilities.
- (D) Routine Maintenance and Replacement. An application shall not be required for: (1) routine maintenance; or (2) the replacement of a small wireless facility with another small wireless facility that is the same, substantially similar or smaller in size and weight and height. The City may require a permit for work within the right of way. Such a permit must be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person performing similar activities, regardless of technology, in the ROW. [NOTE: CONSIDER INCLUDING A LIST OF ACTIVITIES THAT REQUIRE A PERMIT EITHER IN CODE, ON THE APPLICATION, IN AGREEMENTS, ETC. For example, *The City requires a permit for work within the ROW for activities that require excavation or closure of sidewalks or vehicular lanes.*]
- (E) Information Updates. Any amendment to non-material information contained in an application shall be submitted in writing to the City within thirty (30) days of the change. [NOTE: MATERIAL CHANGES MAY NECESSITATE A NEW APPLICATION.]
- (F) Application Fees. Application fees shall be set by [resolution].

[NOTE: THE FCC PRESCRIBED THE FOLLOWING SAFE HARBOR FEES BELOW IN THE SMALL CELL ORDER. CITIES MAY CHOOSE TO INCORPORATE THIS

LANGUAGE INTO THEIR CODE OR REFERENCE A FEE SCHEDULE SET BY RESOLUTION.

- (1) *\$500 for up to the first five small wireless facilities in the same application, with an additional \$100 for each small wireless facility beyond five in the same application, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.*
- (2) *\$1000 for the installation, modification or replacement of a pole together with the collocation of an associated small wireless facility in the rights-of-way that is a permitted use in accordance with this Chapter, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.]*

**Section 4 – Action on Administrative Permit Applications Subject to this Chapter**

- (A) The City must process all applications on a nondiscriminatory basis and may deny an application subject to this Chapter if the proposed small wireless facility or new, modified, or replaced pole:
  - (1) Materially and demonstrably interferes with the safe operation of traffic control equipment;
  - (2) Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;
  - (3) Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;
  - (4) Fails to comply with applicable codes, standards and regulations, including the City’s design standards; or
  - (5) Fails to comply with the provisions in this Chapter.
- (B) The City must act on an application within the applicable shot clock and provide written notice to the applicant if the application is denied. The written notice shall state the reasons for denial, with reference to specific code provisions, ordinance, application instruction or otherwise publicly-stated procedures on which the denial was based, and be sent to the applicant within five (5) days after the City denies the application or before the applicable shot clock expires, whichever occurs first.
- (C) Batch Applications. [NOTE: FCC SMALL CELL ORDER ALLOWS APPLICANTS TO SUBMIT SWF APPLICATIONS IN BATCHES, WITHOUT NUMERICAL LIMITS.]

CITIES MAY CONSIDER TO BATCH APPLICATIONS. SOME MAY CHOOSE TO BATCH BY COMMON DESIGN ELEMENTS AND/OR VICINITY, AS WELL AS OTHER MEASURES TO PROMOTE EFFICIENCY.

A BATCH APPLICATION THAT INCLUDES DEPLOYMENT(S) THAT FALL WITHIN COLLOCATIONS ON EXISTING STRUCTURES AND DEPLOYMENT(S) ON NEW STRUCTURES SHALL BE SUBJECT TO A 90-DAY TIMEFRAME FOR APPROVAL AS OPPOSED TO A 60-DAY TIMEFRAME.]

**Section 5 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements**

- (A) Maximum Size of Permitted Use. Any wireless provider that seeks to install, modify, or replace facilities on a pole in the rights-of-way that exceeds the height limits contained in Section 2(R)(1), shall be subject to applicable requirements [or insert cross references to macro facilities code].

[CITIES MAY CONSIDER ADDING A SUBSECTIONS (B) – (D) HERE OR A SECTION IN THE DESIGN STANDARDS THAT HANDLES THE METHODS FOR DECORATIVE POLES, UNDERGROUND AND HISTORIC DISTRICTS. SECTION 5 IS ALSO AN APPROPRIATE PLACE TO INSERT DESIGN STANDARDS IF CITIES CHOOSE TO CODIFY SUCH STANDARDS.]

- (B) Decorative Poles. Subject to this code and applicable design standards, a wireless provider is permitted to collocate on or replace a decorative pole when necessary to collocate a small wireless facility; provided that any such replacement pole shall, to the extent feasible, replicate the design of the pole being replaced.
- (C) Underground District. [ACCORDING TO THE FCC ORDER, UNDERGROUNDING REQUIREMENTS ARE SUBJECT TO THE SAME CRITERIA AS OTHER AESTHETIC STANDARDS.

SOME COMPONENTS OF SMALL WIRELESS FACILITIES WILL OFTEN NOT WORK UNDERGROUND. THEREFORE, CITY UNDERGROUNDING REQUIREMENTS OR UNDERGROUND DISTRICTS MAY CREATE AN EFFECTIVE PROHIBITION. CITIES ARE ENCOURAGED TO REVIEW CURRENT UNDERGROUNDING REQUIREMENTS AND WORK WITH THEIR ATTORNEYS/ROW SPECIALISTS TO MAKE SURE THOSE REQUIREMENTS ARE NOT IN CONFLICT WITH THE FCC ORDER.]

- (D) Historic District. Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a similar appearance, including coloring and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Any such design or



concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.

[NOTE:(B) – (D) OF THIS SECTION CODIFY THE FCC SMALL CELL ORDER’S REQUIREMENT THAT AESTHETIC STANDARDS MUST BE: (1) REASONABLE, MEANING THEY ARE TECHNICALLY FEASIBLE AND REASONABLY DIRECTED TO AVOIDING OR REMEDYING THE INTANGIBLE PUBLIC HARM OF UNSIGHTLY OR OUT-OF-CHARACTER DEPLOYMENTS; (2) NO MORE BURDENSOME THAN THOSE APPLIED TO OTHER TYPES OF INFRASTRUCTURE DEPLOYMENT; (3) OBJECTIVE; AND, (4) PUBLISHED IN ADVANCE. THE REQUIREMENTS MAY NOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING WIRELESS SERVICE.]

### **Section 6 – Effect of Construction/Work Permit**

[NOTE: CITIES SHOULD CROSS-REFERENCE BACK TO PERMITTING CODE SO LANGUAGE WITHIN THIS SECTION IS CONSISTENT.]

- (A) Authority Granted. No Property Right or Other Interest Created. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way. [NOTE: IF YOUR CITY HAS A ROW LICENSE, CLARIFY THAT THIS DOES NOT GRANT A ROW LICENSE OR RIGHT TO PROVIDE SERVICES.]
  
- (B) Permit Duration.
  - (1) A permit for construction granted pursuant to this Section shall be valid for a period of \_\_\_\_\_ days after issuance unless the City agrees to extend this period for good cause, including but not limited to delay caused by the lack of commercial power or communications facilities, or by other events outside of the reasonable control of the wireless provider. [NOTE: IF YOUR CITY HAS A BUILDOUT PERIOD ALREADY ESTABLISHED FOR ROW CONSTRUCTION, THIS SUBSECTION SHOULD ALLOW A CONSISTENT PERIOD OF TIME. THE USE OF “DAYS” IN THIS SUBSECTION IS NOT INTENDED TO BE LIMITING; 180 TO 365 DAYS MAY BE APPROPRIATE IN THIS SUBSECTION. THE BUILDOUT PERIOD MUST REASONABLY ALLOW TIME FOR CONSTRUCTION.]
  
  - (2) The installed facility is subject to applicable relocation requirements, termination for material non-compliance after notice and a reasonable opportunity to cure, and an applicant’s right to terminate a permit at any time.

## **Section 7 – Removal, Relocation or Modification of Small Wireless Facility in the ROW**

[NOTE: IF YOUR CITY HAS REMOVAL, RELOCATION, ABANDONMENT, OR MODIFICATION SECTIONS IN OTHER ROW CODES, CONSIDER CROSS-REFERENCING TO THOSE SECTIONS HERE.]

- (A) Notice. The City shall provide the applicant reasonable advance notice, but no less than \_\_\_ days following written notice from the City, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.
- (B) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City in the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider promptly after cutting or removing a small wireless facility.
- (C) Abandonment of Facilities. [NOTE: MAKE CONSISTENT WITH THE CITY’S HANDLINGS OF ABANDONMENT IN OTHER CODES.]
- (D) Damage and Repair. The City may require a wireless provider to repair all damage to the rights-of-way directly caused by the activities of the wireless provider and return the rights-of-way to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements and specifications. If the wireless provider fails to make the repairs within \_\_\_\_\_ days after written notice, the City may affect those repairs and charge the applicable party the actual, documented cost of such repairs.

## **Section 8 – Collocation on City Structures in the ROW**

[NOTE: NOT ALL CITIES MAY CHOOSE TO ALLOW SMALL WIRELESS FACILITIES TO BE COLLOCATED ON CITY STRUCTURES.]

- (A) Collocation on City Structures. Small wireless facilities may be collocated on city structures in the rights-of-way pursuant to this Chapter. No person will be permitted an exclusive arrangement or an arrangement which excludes otherwise qualified applicants to attach to city structures in the rights-of-way. A person who purchases or otherwise acquires a City structure is subject to the requirements of this section.

[NOTE: COLLOCATION ON CITY STRUCTURES OFTEN IMPLICATES MAKE-READY WORK TO PREPARE THE STRUCTURE FOR THE NEW ATTACHMENT. MAKE-READY PROVISIONS ARE TRADITIONALLY NEGOTIATED IN POLE ATTACHMENT AGREEMENTS BETWEEN THE PARTIES. TO THE EXTENT THAT THE CITY HAS CONTROL OVER SUCH NEGOTIATIONS OR SEEKS GENERAL GUIDANCE ON APPROPRIATE RATES, FEES, TERMS AND CONDITIONS, THE FOLLOWING SAMPLE LANGUAGE PROVIDES A USEFUL STARTING POINT:

*Make-Ready. The rates, fees, terms and conditions for the make-ready work to collocate a small wireless facility on a pole owned or controlled by the City must be nondiscriminatory, competitively neutral, reasonable, comply with this Chapter and be subject to the following:*

- (1) *The City or any person owning, managing, or controlling the poles owned by the City will provide a good faith estimate for any make-ready work reasonably necessary to make a specific city pole suitable for attachment of the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.*
- (2) *The City or any person owning, managing, or controlling the poles owned by the city shall not require more make-ready work than required to meet applicable codes or may be reasonably necessary to avoid interference with other attachments on the pole . Fees for make-ready work shall not include costs related to pre-existing or prior damage and non-compliance. Fees for make-ready work including any pole replacement shall not exceed actual and direct costs, or the amount charged to others for similar work and shall not include any revenue or contingency based consultant fees or expenses of any kind.]*

## **Section 9 – Rates for ROW and Collocation on City Structures in the ROW**

[NOTE: THE FCC PRESCRIBED THE FOLLOWING SAFE HARBOR FEES BELOW IN (A). CITIES MAY CHOOSE TO INCORPORATE THIS LANGUAGE INTO THEIR CODE, LICENSE, FRANCHISE, OR RIGHT-OF-WAY USE AGREEMENT OR MAKE REFERENCE HERE TO A FEE SCHEDULE SET BY RESOLUTION]

- (A) The recurring rate for use of the ROW and attachment of small wireless facilities to a city structure in the ROW shall be subject to the following requirements:
  - (1) Annual Rate. A wireless provider authorized to place small wireless facilities and any related pole in the rights-of-way will pay to the City compensation for use of the rights-of-way and collocation on city structures in the ROW a rate that is

based on (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory. This rate, together with the one-time application fees, shall be the total compensation that the wireless provider is required to pay the city for the deployment of each small wireless facility in the ROW and any associated pole. The FCC's safe harbor rate is an aggregate annual rate not to exceed \$270 per small wireless facility. [NOTE: THE FCC DOES NOT PROVIDE DIRECTION REGARDING THE POTENTIAL ALLOCATION OF FEES CHARGED FOR THE USE OF THE ROW AND ATTACHMENT TO A CITY STRUCTURE, BUT THE TOTAL FEE CHARGED FOR EACH SMALL WIRELESS FACILITY MUST MEET THE CRITERIA IN THE 2018 FCC ORDER. IN OTHER WORDS, THE CITY MAY NOT CHARGE TWICE FOR THE REIMBURSEMENT OF THE SAME COSTS.]

- (2) Payment Obligation Upon or After Facility Removal. A wireless provider may remove one or more of its small wireless facilities at any time from the rights-of-way and city structures in the ROW with the required permits. The wireless provider will cease owing the City compensation, as of the date of removal, for such removed facilities.

#### **Section 10 – Effective Date**

This Ordinance shall take effect \_\_\_\_\_ days after its passage, approval and publication.

## Acknowledgements

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## Appendix A – Shot Clock Information

*Shot clock provisions that apply to small wireless facilities are codified in 47 C.F.R. Section 1.6003, which is provided below.*

### **§1.6003 Reasonable periods of time to act on siting applications.**

(a) *Timely action required.* A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) *Shot clock period.* The shot clock period for a siting application is the sum of—

(1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

(2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) *Presumptively reasonable periods of time—*(1) *Review periods for individual applications.* The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching.* (i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(d) *Tolling period.* Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

(1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the

obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(e) *Shot clock date.* The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; *provided*, that if the date calculated in this manner is a “holiday” as defined in §1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term “business day” means any day as defined in §1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

## Appendix B – Code of Federal Regulations (C.F.R) Cited Throughout Document

### 47 C.F.R. Section 1.1307

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**§1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

[Link to an amendment published at 85 FR 18142, Apr. 1, 2020.](#)

[Link to a correction of the above amendment published at 85 FR 33578, June 2, 2020.](#)

(a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§1.1308 and 1.1311) and may require further Commission environmental processing (*see* §§1.1314, 1.1315 and 1.1317):

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

NOTE: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places (*see* 54 U.S.C. 300308; 36 CFR parts 60 and 800), and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in floodplains, if the facilities will not be placed at least one foot above the base flood elevation of the floodplain.

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§1.1310 and 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities must



contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request. Such compliance statements may be omitted from license applications for transceivers subject to the certification requirement in §25.129 of this chapter.

(1) The appropriate exposure limits in §§1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in §1.1310 or §2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of table 1, *building-mounted antennas* means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term *power* in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in §2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase *total power of all channels* in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

**TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION**

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5)	Power >100 W ERP (164 W EIRP).
Commercial Mobile Radio Services (part 20)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP). Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
	Consumer Signal Booster equipment grantees under the Commercial Mobile Radio Services provisions in part 20 are required to attach a label to Fixed Consumer Booster antennas that:
	(1) Provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transmitting antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
Paging and Radiotelephone Service (subpart E of part 22)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP). Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
Cellular Radiotelephone Service (subpart H of part 22)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).

	Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).
Personal Communications Services (part 24)	(1) Narrowband PCS (subpart D):
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).
	(2) Broadband PCS (subpart E):
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP).
	Building-mounted antennas: total power of all channels >2000 W ERP (3280 W EIRP).
Satellite Communications Services (part 25)	All included.
	In addition, for NGSO subscriber equipment, licensees are required to attach a label to subscriber transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310 of this chapter.
Miscellaneous Wireless Communications Services (part 27 except subpart M)	(1) For the 1390-1392 MHz, 1392-1395 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands:
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP).
	Building-mounted antennas: total power of all channels >2000 W ERP (3280 W EIRP).
	(2) For the 698-746 MHz, 746-764 MHz, 776-794 MHz, 2305-2320 MHz, and 2345-2360 MHz bands:
	Total power of all channels >1000 W ERP (1640 W EIRP).
Broadband Radio Service and Educational Broadband Service (subpart M of part 27)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	BRS and EBS licensees are required to attach a label to subscriber transceiver or transverter antennas that:

	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
Upper Microwave Flexible Use Service (part 30)	Non-building-mounted antennas: Height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Antennas are mounted on buildings.
Radio Broadcast Services (part 73)	All included.
Auxiliary and Special Broadcast and Other Program Distributional Services (part 74)	Subparts G and L: Power >100 W ERP.
Stations in the Maritime Services (part 80)	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations (subpart P of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
Private Land Mobile Radio Services Specialized Mobile Radio (subpart S of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: Total power of all channels >1000 W ERP (1640 W EIRP).
76-81 GHz Radar Service (part 95)	All included.
Amateur Radio Service (part 97)	Transmitter output power >levels specified in §97.13(c)(1) of this chapter.
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
70/80/90 GHz Bands (subpart Q of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.

	Building-mounted antennas: power >1640 W EIRP.
	Licensees are required to attach a label to transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.

(2)(i) Mobile and portable transmitting devices that operate in the Commercial Mobile Radio Services pursuant to part 20 of this chapter; the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper Microwave Flexible User Service pursuant to part 30 of this chapter; the Maritime Services (ship earth stations only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS), the Medical Device Radiocommunication Service (MedRadio), and the 76-81 GHz Band Radar Service pursuant to part 95 of this chapter; and the Citizens Broadband Radio Service pursuant to part 96 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§2.1091 and 2.1093 of this chapter.

(ii) Unlicensed PCS, unlicensed NII, and millimeter-wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§15.255(g), 15.257(g), 15.319(i), and 15.407(f) of this chapter.

(iii) Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) is subject to routine environmental evaluation as specified in §§2.1093 and 95.2385 of this chapter.

(iv) Equipment authorized for use in the Medical Device Radiocommunication Service (MedRadio) as a medical implant device or body-worn transmitter (as defined in subpart I of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in §§2.1093 and 95.2585 of this chapter by finite difference time domain (FDTD) computational modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that supporting documentation and/or specific absorption rate (SAR) measurement data be submitted.

(v) All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in §1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter or field strength levels that, when squared, exceed 5% of the square of the electric or magnetic field strength limit applicable to their particular transmitter. Owners of transmitter sites are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in §1.1307(b) and, where feasible, should encourage co-location of transmitters and common solutions for controlling access to areas where the RF exposure limits contained in §1.1310 might be exceeded.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in §1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in §1.1310 must submit an EA if emissions from the applicant's transmitter or facility results, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter of facility.

(c) If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. (*See* §1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (*see* §§1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

(d) If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

NOTE TO PARAGRAPH (d): Pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under part 17 of this chapter, if the proposed antenna structure will be over 450 feet in height above ground level (AGL) and involves either:

1. Construction of a new antenna structure;
2. Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraph I(C)(1)(3) of Appendix B to part 1 of this chapter; or
3. Addition of lighting or adoption of a less preferred lighting style as defined in §17.4(c)(1)(iii) of this chapter. The Bureau shall consider whether to require an EA for other antenna structures subject to §17.4(c) of this chapter in accordance with §17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in §17.4(c) of this chapter.

(e) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

[51 FR 15000, Apr. 22, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.1307, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

EFFECTIVE DATE NOTE: At 85 FR 18142, Apr. 1, 2020, §1.1307 was amended by revising paragraph (b). At 85 FR 33578, June 2, 2020, this revision was delayed indefinitely.

## **47 C.F.R Section 1.6002**

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### **§1.6002 Definitions.**

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq.* Terms used in this subpart have the following meanings:

(a) *Action or to act* on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna*, consistent with §1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

(c) *Antenna equipment*, consistent with §1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antenna equipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) *Collocation*, consistent with §1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—

- (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (3) The definition of “collocation” in §1.6100(b)(2) applies to the term as used in that section.
- (h) *Deployment* means placement, construction, or modification of a personal wireless service facility.

(i) *Facility or personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

(j) *Siting application or application* means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

(k) *Siting authority* means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(l) *Small wireless facilities* are facilities that meet each of the following conditions:

(1) The facilities—

(i) Are mounted on structures 50 feet or less in height including their antennas as defined in §1.1320(d);  
or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in §1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §1.1307(b).

(m) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

[83 FR 51884, Oct. 15, 2018, as amended at 84 FR 59567, Nov. 5, 2019]



# Small Wireless Facilities Model Design Guidelines

JUNE 2020

This model was produced in coordination with:





## **DISCLAIMER**

Any model document provided by the League of Oregon Cities (LOC) is intended to be used as a starting point in an individual city's development of its own documents. Each city is unique, and any adopted document or policy should be individually tailored to meet a city's unique needs. Furthermore, this model is not intended to be a substitute for legal advice. Cities should consult with their city attorney before adopting any small wireless facility policies to ensure that they comply with all aspects of federal, state, and local law.

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## Foreword

### Background

On January 31, 2017, Federal Communications Commission (“FCC”) Chairman Ajit Pai established a Broadband Deployment Advisory Committee (“BDAC”), which he tasked with making recommendations to the FCC on ways to accelerate the deployment of broadband by reducing or removing regulatory barriers to infrastructure investment. On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order ([FCC 18-133](#), referred throughout the document as “Small Cell Order” or “FCC Order”) that significantly limits local authority over small wireless infrastructure deployment and fees for use of the rights-of-way (ROW). The FCC Order took effect January 14, 2019. However, the requirements regarding aesthetics did not take effect until April 15, 2019. Under the FCC Order aesthetic or design standards must be: (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance. The FCC Order also defines the size limitations for small wireless facilities (allowing antennas of up to 3 cubic feet each, with additional equipment not to exceed 28 cubic feet), and specifies that such facilities may not result in human exposure to radiofrequency radiation in excess of applicable standards in the FCC’s rules (federal law preempts local regulation of RF emissions). “Small wireless facilities” are sometimes also called “small cells.”

### LOC Model Small Wireless Facilities Design Standard

In coordination with many cities,<sup>1</sup> representatives from Verizon, AT&T, T-Mobile, and the LOC met from January 2019 to May 2020 to discuss and craft a model code and model design standards relating to small wireless facilities while there is pending litigation<sup>2</sup> on the FCC Order. The model code and model design standards are intended to be paired together.

There is no single design standard that will work for every jurisdiction. As such, the LOC’s model design standard is intended as a roadmap to assist local governments in adopting their own design standard. While example language is included in some sections, the LOC does not intend to suggest these examples could work for every jurisdiction. In some instances, the local government may need to issue a deviation to the design standards when it would be technically infeasible for the applicant to comply. The deviation process is provided in Section I of these model standards and is intended to occur within the “shot clock”<sup>3</sup> – the time frame in which the state or local government should act on a request for authorization to place, construct, or modify personal wireless service facilities, as defined by the FCC. However, to the extent that the local government cannot reasonably act on the application within the shot clock, the parties are encouraged to seek a tolling agreement to allow the applicant to vet reasonable design alternatives and the local government to complete its review. Local governments cannot require a tolling agreement as a condition of a deviation.

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<sup>1</sup> See “Acknowledgments” section for full list of participants.

<sup>2</sup> In October 2018, the LOC in coordination with other municipalities and municipal leagues filed suit against the FCC in the United States Court of Appeals for the Ninth Circuit.

<sup>3</sup> See Appendix A

The LOC also recognizes there are many ways to structure a design standard. The appropriate structure will vary by jurisdiction. For purposes of this model, the LOC opted to approach designs by type of pole and deployment. The model is intended to provide a general framework and thus is drafted as an outline of provisions jurisdictions may want to include in their final design standard. In many cases example language is provided to help illustrate the issues to be addressed. However, the intent is to allow each jurisdiction to draft the substantive provisions that best reflect local needs and interests. The LOC recommends that jurisdictions that own poles or other structures in the rights-of-way establish a clear design standard. The circumstances of each municipality may, and likely will, require modifications to the framework and/or example language of this model design standard.

### **Additional Considerations**

The LOC model design standards only applies to small wireless facilities. Municipalities should review their existing ordinances, standards and policies to determine if this framework is appropriate. Municipalities may want to consider whether it would be preferable to adopt a utility-neutral standard covering all utilities and communications providers, which would provide one set of “rules” for the design of the public rights-of-way. Differences in policy choices and existing standards, among other things, may impact the decision in how to proceed. It is recommended that cities consult their attorney, ROW specialists, engineers, master plans, comprehensive plans, goals and/or wireless providers before final adoption of standards. Cities may choose to adopt design standards administratively or in code.

### **Understanding the Organization of the Model Design Standards**

As stated above, the model is best described as an outline or roadmap to assist municipalities in drafting the appropriate standards for their community. The model includes example language to illustrate the intent of the section. The example language, or a variation thereof, may be appropriate for final adoption in some jurisdictions.

Finally, there may be additional notes or issues for consideration within the subsections of the model, which are [bracketed] and in ALL CAPS. Again, these notes are intended as guidance for municipal drafters, not for adoption in a final ordinance.

## Small Wireless Facility Design Standards

[GIVEN THAT THE TECHNICAL NEEDS FOR EACH OPERATOR MAY VARY, JURISDICTIONS ARE ENCOURAGED TO ADOPT DESIGN STANDARDS BY CITY COUNCIL RESOLUTION AND/OR ADMINISTRATIVELY BY THE CITY MANAGER OR OTHER OFFICIAL. THIS WAY, CITIES WOULD BE ABLE TO REACT QUICKLY AND AMEND THE STANDARDS IN RESPONSE TO CHANGES IN LAW AND TECHNOLOGY. CITIES SHOULD NOTE THAT THIS NIMBLER APPROACH IS POSSIBLE ONLY IF THE REGULATIONS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY ARE LOCATED OUTSIDE OF THE LAND DEVELOPMENT CODE.]

### A. Definitions

“**Antenna**” means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under [47 C.F.R. Part 15](#).

“**Antenna Equipment**” means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

“**Antenna Facility**” means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.

“**Applicable codes**” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.

“**Applicant**” means any person who submits an application as or on behalf of a wireless provider.

“**Application**” means requests submitted by an applicant (i) for permission to collocate small wireless facilities; or (ii) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required.

“**Collocate**” means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. “Collocation” has a corresponding meaning.

“**Day**” means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day.

“**Historic District**” means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at [47 C.F.R. Part 1, Appendix C](#); or, (2) a locally designated historic district as of the effective date of this [Chapter/Section] or in a locally designated historic district existing when an application is submitted. [NOTE: THIS IS NOT MEANT TO RETROACTIVELY AFFECT SWFs ALREADY IN PLACE WHEN A NEW DISTRICT IS CREATED].

“**Person**” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

“**Pole**” means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.

“**Rights-of-Way**” or “**ROW**” means [INSERT A CONSISTENT DEFINITION ACROSS OTHER CODES. Example: “Right-of-way,” “rights-of-way,” “public right-of-way,” or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel.]

“**Small wireless facility**” means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

1. The proposed facilities meet one of the following height parameters:
  - a. are mounted on structures 50 feet or less in height including their antennas as defined in 47 C.F.R. Section 1.1320(d), or
  - b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
  - c. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
2. Each antenna or antenna enclosure shall not exceed three cubic feet in volume.
3. The total volume of installed equipment external to the pole (including, but not limited to cabinets, vaults, boxes) shall not exceed twenty-eight (28) cubic feet. This maximum applies to all equipment installed at the time of original application and includes any equipment to be installed at a future date. Antennas and antenna

enclosures are excluded. If equipment exceeds this maximum, the installation will be redefined as a Macro site installation and all the associated standards and rates for Macro installations will be applied.

4. The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in the FCC's Rules and Regulations [47 C.F.R. section 1.1307(b)].

“**Structure**” means the same as provided in 47 C.F.R. § 1.6002(m), as may be superseded or amended, which defines the term as a pole, tower, base station, or structure, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).

[IF THE CITY HAS SPECIFIC CODES OR ORDINANCES WITH DEFINITIONS RELATING TO SWF, CONSIDER INCLUDING DEFINITIONS OR A CROSS REFERENCE HERE.]

## **B. General Requirements.**

1. [NOTE: SECTION (B)(1) IS OPTIONAL. CITIES SHOULD CONSIDER A PREFERENCE THAT IS IN LINE WITH GOALS AND CURRENT STANDARDS ON WHETHER THE CITY PREFERS GROUND-MOUNTED EQUIPMENT OR NOT.]  
Ground-mounted equipment in the right-of-way is discouraged, unless the applicant can demonstrate that pole-mounted equipment is not technically feasible, or the electric utility requires placement of equipment on the ground (such as an electric meter). If ground-mounted equipment is necessary, then the applicant shall conceal the equipment in a cabinet, in street furniture or with landscaping. [THE TERM “TECHNICALLY FEASIBLE” IS USED BY THE FCC TO DESCRIBE WHEN AESTHETIC STANDARDS MAY BE FOUND TO BE REASONABLE AND DO NOT MATERIALLY INHIBIT THE WIRELESS SERVICE PROVIDER’S ABILITY TO PROVIDE SERVICE.]
2. Replacement poles, new poles and all antenna equipment shall comply with the Americans with Disabilities Act (“ADA”), city construction and sidewalk clearance standards and city, state and federal laws and regulations in order to provide a clear and safe passage within, through and across the right-of-way. Further, the location of any replacement pole, new pole, and/or antenna equipment must comply with applicable traffic requirements, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect public health, safety or welfare. [NOTE: ADA REQUIREMENTS, WALKING SPACE, BOLT PATTERNS AND OTHER GENERALLY APPLICABLE CONSTRUCTION STANDARDS ALL NEED TO BE CONSIDERED. THESE CAN BE LIMITING DESIGN FACTORS.]
3. Replacement poles shall be located as near as feasible to the existing pole. The abandoned pole must be removed within \_\_\_\_\_ days. [NOTE: KEEP CONSISTENT

WITH OTHER CODES OR REQUIREMENTS ABOUT TIMEFRAMES TO REMOVE EQUIPMENT.]

4. Any replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section I.
5. No advertising, branding or other signage is allowed unless approved by the [City designee] as a concealment technique or as follows:
  - a. Safety signage as required by applicable laws, regulations, and standards; and,
  - b. Identifying information and 24-hour emergency telephone number (such as the telephone number for the operator's network operations center) on wireless equipment in an area that is visible.

[NOTE: IDENTIFYING SIGNAGE IS USUALLY REQUIRED TO BE PLACED ON THE POLE AND READABLE FROM THE GROUND AS A MINIMUM. A CITY MAY ADD ADDITIONAL REQUIREMENTS FOR PLACEMENT. STANDARDS FOR SIGNAGE ARE ADVISORY AND MAY BE SUBJECT TO OVERSIGHT BY MULTIPLE FEDERAL AGENCIES. ALTHOUGH THE FCC'S REGULATIONS ULTIMATELY CONTROL, THE FCC'S REGULATIONS ARE GENERAL AND CAN BE UNCLEAR. AS A BEST PRACTICE, CITIES MAY WISH TO CONSULT THE MORE DETAILED RECOMMENDATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION.]

6. The total volume of multiple antennas on one structure shall not exceed fifteen (15) cubic feet, unless additional antenna volume is requested and approved pursuant to Section I.
7. Antennas and antenna equipment shall not be illuminated except as required by municipal, federal or state authority, provided this shall not preclude deployment on a new or replacement street light.
8. Small wireless facilities may not displace any existing street tree or landscape features unless: (a) such displaced street tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the City, and (b) the applicant submits and adheres to a landscape maintenance plan or agrees to pay an appropriate in-lieu fee for the maintenance costs.

**C. Small Wireless Facilities Attached to Wooden Poles and Non-Wooden Poles with Overhead Lines.** Small wireless facilities located on wooden utility poles and non-wooden utility poles with overhead lines shall conform to the following design criteria unless a deviation is requested and approved pursuant to Section I:

[IN OREGON, PGE AND PACIFIC CORP ARE THE MOST COMMON UTILITY POLE OWNERS. BOTH HAVE THEIR OWN DESIGN STANDARDS. CITIES SHOULD



**WORK WITH POLE OWNERS TO FIND WHAT WORKS BEST FOR THEIR COMMUNITIES AND COMPARE DESIGN STANDARDS.]**

1. Proposed antenna and related equipment shall meet:
  - a. The City’s design standards for small wireless facilities;
  - b. The pole owner requirements; and
  - c. National Electric Safety Code (“NESC”) and National Electric Code (“NEC”) standards.
2. The pole at the proposed location may be replaced with a taller pole or extended for the purpose of accommodating a small wireless facility; provided that the replacement or extended pole, together with any small wireless facility, does not exceed 50 feet in height or 10 percent taller than adjacent poles, whichever is greater. The replacement or extended pole height may be increased if required by the pole owner, and such height increase is the minimum necessary to provide sufficient separation and/or clearance from electrical and wireline facilities. Such replacement poles may either match the approximate color and materials of the replaced pole or shall be the standard new pole used by the pole owner in the city.
3. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduit shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached, or adjacent poles located within the contiguous right-of-way. Near matches may be permitted by the City when options are limited by technical feasibility considerations, such as when high-frequency antennas cannot be placed within an opaque shroud but could be wrapped with a tinted film.
4. Antennas which are mounted on poles shall be mounted as close to the pole as technically feasible and allowed by the pole owner.
5. No antenna shall extend horizontally more than 20 inches past the outermost mounting point (where the mounting hardware connects to the antenna), unless additional antenna space is requested and approved pursuant to Section I. [NOTE: THE 20 INCH STANDARD HERE IS NOT INTENDED TO DICTATE THE SIZE OF THE ANTENNA. RATHER, TO DICTATE THE DISTANCE BETWEEN THE ANTENNA/ANTENNA EQUIPMENT AND THE POLE ITSELF.]
6. Antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves and conduit, which is mounted on poles shall be mounted as close to the pole as technically feasible and allowed by the pole owner.
7. Antenna equipment for small wireless facilities must be attached to the pole, unless otherwise required by the pole owner or permitted to be ground-mounted [pursuant to subsection (B)(1) above]. The equipment must be placed in an enclosure reasonably related in size to the intended purpose of the facility. [IF APPLICABLE, THE APPLICANT IS ENCOURAGED TO PLACE THE EQUIPMENT ENCLOSURE(S)]

BEHIND ANY DECORATIONS, BANNERS OR SIGNS THAT MAY BE ON THE POLE. IN APPROPRIATE CIRCUMSTANCES, CITIES MAY ALSO WISH TO CONSIDER ALLOWING ENCLOSURES THAT INCLUDE REASONABLE SPACE FOR FUTURE ADDITIONAL EQUIPMENT.]

8. All cables and wiring shall be covered by conduits and cabinets to the extent that it is technically feasible, if allowed by pole owner. The number of conduits shall be minimized to the extent technically feasible.

**D. Small Wireless Facilities Attached to Non-Wooden Light Poles and Non-Wooden Utility Poles without Overhead Utility Lines.** Small wireless facilities attached to existing or replacement non-wooden light poles and non-wooden utility poles without overhead lines shall conform to the following design criteria unless a deviation is requested and approved pursuant to Section I:

[NOTE: JURISDICTION MAY PREFER A OR B OR BOTH. ALSO, NOTE THAT THE MOST COMMON TYPES OF THESE POLES ARE DUAL USE POLES. DUAL USE POLES USUALLY REQUIRE SEPARATION INSIDE THE POLE TO KEEP THE UTILITY EQUIPMENT SEPARATE FROM NEW OR ADDED EQUIPMENT FROM SMALL WIRELESS FACILITIES. HOWEVER, THERE MAY BE STANDALONE SMALL WIRELESS FACILITIES POLES THAT MAY USE OPTION A OR B OR BOTH.]

- a. **External Equipment.** The antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible and must be reasonably related in size to the intended purpose of the facility and reasonable expansion for future frequencies and/or technologies, not to exceed the volumetric requirements described in Section A. If the equipment enclosure(s) is mounted on the exterior of the pole, the applicant is encouraged to place the equipment enclosure(s) behind any decorations, banners or signs that may be on the pole. Conduit and fiber must be fully concealed within the pole.
- b. **Concealed Equipment.** All equipment (excluding disconnect switches), conduit and fiber must be fully concealed within the pole. The antennas must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible. [NOTE: AT THIS TIME, MILLIMETER WAVE ANTENNAS CANNOT BE COVERED OR SHROUDED, THEREFORE THEY MUST BE MOUNTED TO THE OUTSIDE OF THE POLE. POLES MAY HAVE TO BE SIGNIFICANTLY BIGGER IN DIAMETER IF EQUIPMENT IS CONCEALED IN OPTION B (ACCORDING TO POLE MANUFACTURES APPROX. 16-20 INCHES). OPTION A MAY REQUIRE A REPLACEMENT POLE. THE DIAMETER OF THE POLE SHOULD BE SIMILAR TO THE ORIGINAL.]

2. Any replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section I.
3. The height of any replacement pole may not extend more than 10 feet above the height of the existing pole, unless such further height increase is required in writing by the pole owner.

**E. New Poles.** Small wireless facilities may be attached to new poles that are not replacement poles under sections C or D, installed by the wireless provider, subject to the following criteria:

[NOTE: CITIES SHOULD CHECK WITH OTHER CODES TO MAKE SURE THIS SECTION DOES NOT CONFLICT WITH PRACTICES OF NO NEW POLES OR POLE NEUTRAL PRACTICES, AND REVISE SUCH CODES AS APPROPRIATE.]

1. Antennas, antenna equipment and associated equipment enclosures (excluding disconnect switches), conduit and fiber shall be fully concealed within the structure. If such concealment is not technically feasible, or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the structure or mounted as close to the pole as feasible, and must be reasonably related in size to the intended purpose of the facility, not to exceed the volumetric requirements in Section (A)(3). [IN APPROPRIATE CIRCUMSTANCES, CITIES MAY ALSO WISH TO CONSIDER ALLOWING ENCLOSURES THAT INCLUDE REASONABLE SPACE FOR FUTURE ADDITIONAL EQUIPMENT.]
2. To the extent technically feasible, all new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section I.
3. New poles shall be no more than forty (40) feet in height unless additional height is requested and approved pursuant to Section I. [NOTE: THE FCC DEFINITION CONSIDERS A FACILITY A SMALL WIRELESS FACILITY IF IT IS 50 FT. OR UNDER. SMALL CELL TECHNOLOGY WORKS BEST WHEN DEPLOYED BETWEEN 35-45 FT. AND OTHER THAN DEPLOYMENTS ON UTILITY POLES, MOST WIRELESS PROVIDERS DO NOT NEED 50 FT TO DEPLOY. THEREFORE, IT MAY BE POSSIBLE TO HAVE NEW POLES THAT ARE NOT 50 FT.]
4. The city prefers that wireless providers install small wireless facilities on existing or replacement poles instead of installing new poles, unless the wireless provider can document that installation on an existing or replacement pole is not technically feasible or otherwise not possible (due to a lack of owner authorization, safety considerations, or other reasons acceptable to the [City designee]).

[NOTE: CITIES MAY CONSIDER THE SPACING BETWEEN POLES/DEPLOYMENTS. IT IS RECOMMENDED THAT CITIES CONSIDER DISTANCES BETWEEN NEW POLES BY AN INDIVIDUAL PROVIDER RATHER THAN ALL SWF DEPLOYMENTS. SPACING MAY VARY BECAUSE OF BUILDINGS, TOPOGRAPHY, SIZE OF INSTALLATION, ETC. THEREFORE, IT IS RECOMMENDED THAT CITIES WORK WITH PROVIDERS TO SEE WHAT IS FEASIBLE. THE FCC PROVIDES THAT MINIMUM SPACING REQUIREMENTS CANNOT PREVENT A PROVIDER FROM REPLACING ITS PREEXISTING FACILITIES OR COLLOCATING NEW EQUIPMENT ON A STRUCTURE ALREADY IN USE. ULTIMATELY, MINIMUM SPACING REQUIREMENTS WILL BE EVALUATED UNDER THE FCC'S TEST FOR AESTHETIC REGULATIONS – THAT THE REQUIREMENTS MUST BE (1) REASONABLE; (2) NO MORE BURDENSOME THAN THOSE APPLIED TO OTHER INFRASTRUCTURE DEPLOYMENTS; (3) OBJECTIVE, AND (4) PUBLISHED IN ADVANCE.]

**F. Undergrounding Requirements.** [ACCORDING TO THE FCC ORDER, UNDERGROUNDING REQUIREMENTS ARE SUBJECT TO THE SAME CRITERIA AS OTHER AESTHETIC STANDARDS.]

SOME COMPONENTS OF SMALL WIRELESS FACILITIES WILL OFTEN NOT WORK UNDERGROUND. THEREFORE, CITIES UNDERGROUNDING REQUIREMENTS OR UNDERGROUND DISTRICTS MAY CREATE AN EFFECTIVE PROHIBITION. CITIES ARE ENCOURAGED TO REVIEW CURRENT UNDERGROUNDING REQUIREMENTS AND WORK WITH THEIR ATTORNEYS/ROW SPECIALISTS TO MAKE SURE THOSE REQUIREMENTS ARE NOT IN CONFLICT WITH THE FCC ORDER.]

**G. Historic District Requirements.**

Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a similar appearance, including material and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Any such design or concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.

**H. Strand Mounted Equipment.** Strand mounted small wireless facilities are permitted, subject to the following criteria:

1. Each strand mounted antenna shall not exceed 3 cubic feet in volume, unless a deviation is requested and approved pursuant to Section I.
2. Only 2 strand mounted antennas are permitted between any two existing poles.

3. Strand mounted devices shall be placed as close as possible to the nearest pole and in no event more than five feet from the pole unless a greater distance is required by the pole owner.
4. No strand mounted device will be located in or above the portion of the roadway open to vehicular traffic.
5. Strand mounted devices must be installed with the minimum excess exterior cabling or wires (other than original strand) to meet the technological needs of the facility.

#### **I. Deviation from Design Standards.**

1. An applicant may obtain a deviation from these design standards if compliance with the standard: (a) is not technically feasible; (b) impedes the effective operation of the small wireless facility; (c) impairs a desired network performance objective; (d) conflicts with pole owner requirements; or (e) otherwise materially inhibits or limits the provision of wireless service. [NOTE: SINCE DEVIATIONS FROM THE DESIGN STANDARDS MAY LEAD TO QUESTIONS FOR WHY ONE PROVIDER WAS ALLOWED AN EXCEPTION AND ANOTHER WAS NOT, IT IS ADVISED THAT CITIES DOCUMENT REASONS FOR DEVIATIONS.]
2. When requests for deviation are sought under subsections (I)(1)(a)-(e), the request must be narrowly tailored to minimize deviation from the requirements of these design standards, and the [City designee] must find the applicant's proposed design provides similar aesthetic value when compared to strict compliance with these standards.
3. [City designee] may also allow for a deviation from these standards when it finds the applicant's proposed design provides equivalent or superior aesthetic value when compared to strict compliance with these standards.
4. The small wireless facility design approved under this Section I must meet the conditions of 47 C.F.R. Sec. 1.6002(l).
5. [City designee] will review and may approve a request for deviation to the minimum extent required to address the applicant's needs or facilitate a superior design. [NOTE: CITIES MAY RECOMMEND A PRE-MEETING WITH PROVIDERS IF A DEVIATION FROM STANDARDS IS BEING CONSIDERED. HOWEVER, PRE-MEETINGS **MUST BE OPTIONAL**. MANDATORY PRE-MEETINGS, WHETHER WITH STAFF, MEMBERS OF THE COMMUNITY OR NEIGHBORHOOD ASSOCIATIONS, WILL TRIGGER THE SHOT CLOCK TO START.]

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## Appendix A – Shot Clock Information

*Shot clock provisions that apply to small wireless facilities are codified in 47 C.F.R. Section 1.6003, which is provided below.*

### **§1.6003 Reasonable periods of time to act on siting applications.**

(a) *Timely action required.* A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) *Shot clock period.* The shot clock period for a siting application is the sum of—

(1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

(2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) *Presumptively reasonable periods of time—*(1) *Review periods for individual applications.* The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching.* (i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(d) *Tolling period.* Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

(1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the

obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(e) *Shot clock date.* The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; *provided*, that if the date calculated in this manner is a “holiday” as defined in §1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term “business day” means any day as defined in §1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction



## Appendix B – Code of Federal Regulations (C.F.R.) Cited Throughout Document

### 47 C.F.R. Section 1.1307

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**§1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

[Link to an amendment published at 85 FR 18142, Apr. 1, 2020.](#)

[Link to a correction of the above amendment published at 85 FR 33578, June 2, 2020.](#)

(a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§1.1308 and 1.1311) and may require further Commission environmental processing (*see* §§1.1314, 1.1315 and 1.1317):

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

NOTE: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places (*see* 54 U.S.C. 300308; 36 CFR parts 60 and 800), and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in floodplains, if the facilities will not be placed at least one foot above the base flood elevation of the floodplain.

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§1.1310 and 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities must

contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request. Such compliance statements may be omitted from license applications for transceivers subject to the certification requirement in §25.129 of this chapter.

(1) The appropriate exposure limits in §§1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in §1.1310 or §2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of table 1, *building-mounted antennas* means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term *power* in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in §2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase *total power of all channels* in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

**TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION**

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5)	Power >100 W ERP (164 W EIRP).
Commercial Mobile Radio Services (part 20)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP). Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
	Consumer Signal Booster equipment grantees under the Commercial Mobile Radio Services provisions in part 20 are required to attach a label to Fixed Consumer Booster antennas that:
	(1) Provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transmitting antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
Paging and Radiotelephone Service (subpart E of part 22)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
Cellular Radiotelephone Service (subpart H of part 22)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).

	Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).
Personal Communications Services (part 24)	(1) Narrowband PCS (subpart D):
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).
	(2) Broadband PCS (subpart E):
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP).
	Building-mounted antennas: total power of all channels >2000 W ERP (3280 W EIRP).
Satellite Communications Services (part 25)	All included.
	In addition, for NGSO subscriber equipment, licensees are required to attach a label to subscriber transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310 of this chapter.
Miscellaneous Wireless Communications Services (part 27 except subpart M)	(1) For the 1390-1392 MHz, 1392-1395 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands:
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP).
	Building-mounted antennas: total power of all channels >2000 W ERP (3280 W EIRP).
	(2) For the 698-746 MHz, 746-764 MHz, 776-794 MHz, 2305-2320 MHz, and 2345-2360 MHz bands:
	Total power of all channels >1000 W ERP (1640 W EIRP).
Broadband Radio Service and Educational Broadband Service (subpart M of part 27)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	BRS and EBS licensees are required to attach a label to subscriber transceiver or transverter antennas that:

	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
Upper Microwave Flexible Use Service (part 30)	Non-building-mounted antennas: Height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Antennas are mounted on buildings.
Radio Broadcast Services (part 73)	All included.
Auxiliary and Special Broadcast and Other Program Distributional Services (part 74)	Subparts G and L: Power >100 W ERP.
Stations in the Maritime Services (part 80)	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations (subpart P of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
Private Land Mobile Radio Services Specialized Mobile Radio (subpart S of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: Total power of all channels >1000 W ERP (1640 W EIRP).
76-81 GHz Radar Service (part 95)	All included.
Amateur Radio Service (part 97)	Transmitter output power >levels specified in §97.13(c)(1) of this chapter.
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
70/80/90 GHz Bands (subpart Q of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.

	Building-mounted antennas: power >1640 W EIRP.
	Licensees are required to attach a label to transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.

(2)(i) Mobile and portable transmitting devices that operate in the Commercial Mobile Radio Services pursuant to part 20 of this chapter; the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper Microwave Flexible User Service pursuant to part 30 of this chapter; the Maritime Services (ship earth stations only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS), the Medical Device Radiocommunication Service (MedRadio), and the 76-81 GHz Band Radar Service pursuant to part 95 of this chapter; and the Citizens Broadband Radio Service pursuant to part 96 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§2.1091 and 2.1093 of this chapter.

(ii) Unlicensed PCS, unlicensed NII, and millimeter-wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§15.255(g), 15.257(g), 15.319(i), and 15.407(f) of this chapter.

(iii) Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) is subject to routine environmental evaluation as specified in §§2.1093 and 95.2385 of this chapter.

(iv) Equipment authorized for use in the Medical Device Radiocommunication Service (MedRadio) as a medical implant device or body-worn transmitter (as defined in subpart I of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in §§2.1093 and 95.2585 of this chapter by finite difference time domain (FDTD) computational modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that supporting documentation and/or specific absorption rate (SAR) measurement data be submitted.

(v) All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in §1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter or field strength levels that, when squared, exceed 5% of the square of the electric or magnetic field strength limit applicable to their particular transmitter. Owners of transmitter sites are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in §1.1307(b) and, where feasible, should encourage co-location of transmitters and common solutions for controlling access to areas where the RF exposure limits contained in §1.1310 might be exceeded.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in §1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in §1.1310 must submit an EA if emissions from the applicant's transmitter or facility results, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter of facility.

(c) If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. (*See* §1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (*see* §§1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

(d) If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

NOTE TO PARAGRAPH (d): Pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under part 17 of this chapter, if the proposed antenna structure will be over 450 feet in height above ground level (AGL) and involves either:

1. Construction of a new antenna structure;
2. Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraph I(C)(1)(3) of Appendix B to part 1 of this chapter; or
3. Addition of lighting or adoption of a less preferred lighting style as defined in §17.4(c)(1)(iii) of this chapter. The Bureau shall consider whether to require an EA for other antenna structures subject to §17.4(c) of this chapter in accordance with §17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in §17.4(c) of this chapter.

(e) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

[51 FR 15000, Apr. 22, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.1307, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

EFFECTIVE DATE NOTE: At 85 FR 18142, Apr. 1, 2020, §1.1307 was amended by revising paragraph (b). At 85 FR 33578, June 2, 2020, this revision was delayed indefinitely.

#### **47 C.F.R. Section 1.1320**

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##### **§1.1320 Review of Commission undertakings that may affect historic properties.**

(a) *Review of Commission undertakings.* Any Commission undertaking that has the potential to cause effects on historic properties, unless excluded from review pursuant to paragraph (b) of this section, shall be subject to review under section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. 306108, by applying—

(1) The procedures set forth in regulations of the Advisory Council on Historic Preservation, 36 CFR 800.3-800.13, or

(2) If applicable, a program alternative established pursuant to 36 CFR 800.14, including but not limited to the following:

(i) The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended, Appendix B of this part.

(ii) The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings, Appendix C of this part.

(iii) The Program Comment to Tailor the Federal Communications Commission's Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure, 79 FR 30861 (May 29, 2014).

(b) *Exclusions.* The following categories of undertakings are excluded from review under this section:

(1) *Projects reviewed by other agencies.* Undertakings for which an agency other than the Commission is the lead Federal agency pursuant to 36 CFR 800.2(a)(2).

(2) *Projects subject to program alternatives.* Undertakings excluded from review under a program alternative established pursuant to 36 CFR 800.14, including those listed in paragraph (a)(2) of this section.

(3) *Replacement utility poles.* Construction of a replacement for an existing structure where all the following criteria are satisfied:

(i) The original structure—

(A) Is a pole that can hold utility, communications, or related transmission lines;

(B) Was not originally erected for the sole or primary purpose of supporting antennas that operate pursuant to the Commission's spectrum license or authorization; and

(C) Is not itself a historic property.

(ii) The replacement pole—

(A) Is located no more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole; *provided* that construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of this paragraph, “ground disturbance” means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils;

(B) Has a height that does not exceed the height of the original pole by more than 5 feet or 10 percent of the height of the original pole, whichever is greater; and

(C) Has an appearance consistent with the quality and appearance of the original pole.

(4) *Collocations on buildings and other non-tower structures.* The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup power) on buildings or other non-tower structures where the deployment meets the following conditions:

(i) There is an existing antenna on the building or structure;

(ii) One of the following criteria is met:

(A) *Non-Visible Antennas.* The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;

(B) *Visible Replacement Antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(1) It is a replacement for a pre-existing antenna,

(2) The new antenna will be located in the same vicinity as the pre-existing antenna,

(3) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(4) The new antenna is not more than 3 feet larger in height or width (including all protuberances) than the pre-existing antenna, and



(5) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or

(C) *Other Visible Antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(1) It is located in the same vicinity as a pre-existing antenna,

(2) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(3) The pre-existing antenna was not deployed pursuant to the exclusion in this paragraph,

(4) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(5) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;

(iii) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;

(iv) The deployment of the new antenna involves no new ground disturbance; and

(v) The deployment would otherwise require the preparation of an Environmental Assessment under 1.1304(a)(4) solely because of the age of the structure.

NOTE 1 TO PARAGRAPH (b)(4): A non-visible new antenna is in the “same vicinity” as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface. A visible new antenna is in the “same vicinity” as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within ten feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.

(c) *Responsibilities of applicants.* Applicants seeking Commission authorization for construction or modification of towers, collocation of antennas, or other undertakings shall take the steps mandated by, and comply with the requirements set forth in, Appendix C of this part, sections III-X, or any other applicable program alternative.

(d) *Definitions.* For purposes of this section, the following definitions apply:

*Antenna* means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna. For most services, an antenna will be mounted on or in, and is distinct from, a supporting structure such as a tower, structure or building. However, in the case of AM broadcast stations, the entire tower or group of towers constitutes the antenna for that station. For purposes of this section, the term antenna does not include unintentional radiators, mobile stations, or devices authorized under part 15 of this title.

*Applicant* means a Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

*Collocation* means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

*Tower* means any structure built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna as defined herein.

*Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of the Commission, including those requiring a Commission permit, license or approval. Maintenance and servicing of towers, antennas, and associated equipment are not deemed to be undertakings subject to review under this section.

[82 FR 58758, Dec. 14, 2017]

## **47 C.F.R. Section 1.6002**

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### **§1.6002 Definitions.**

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq.* Terms used in this subpart have the following meanings:

(a) *Action or to act* on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna*, consistent with §1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

(c) *Antenna equipment*, consistent with §1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antennaequipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) *Collocation*, consistent with §1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—

(1) Mounting or installing an antenna facility on a pre-existing structure; and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on thatstructure.

(3) The definition of “collocation” in §1.6100(b)(2) applies to the term as used in that section.

(h) *Deployment* means placement, construction, or modification of a personal wireless service facility.

(i) *Facility or personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

(j) *Siting application or application* means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

(k) *Siting authority* means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(l) *Small wireless facilities* are facilities that meet each of the following conditions:

(1) The facilities—

(i) Are mounted on structures 50 feet or less in height including their antennas as defined in §1.1320(d); or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in §1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §1.1307(b).

(m) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

[83 FR 51884, Oct. 15, 2018, as amended at 84 FR 59567, Nov. 5, 2019]

## Derrick Tokos

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**From:** David Allen  
**Sent:** Monday, February 17, 2020 4:07 PM  
**To:** Mona Linstromberg  
**Cc:** Spencer Nebel; Peggy Hawker; Derrick Tokos; Dean Sawyer  
**Subject:** Re: Final Public Comment on Feb. 18 Agenda

Thanks, Mona ... general exceptions in NMC 14.10.020(C) would apply if such structure/structural part is an allowed use in the particular zone. But Derrick can elaborate on that and other questions at the time of the regular meeting Tues. evening. And staff can cc: council with this so as to avoid any potential online quorum issue. --David

---

From: Mona Linstromberg [lindym@peak.org]  
 Sent: Monday, February 17, 2020 1:33 PM  
 To: David Allen  
 Cc: Peggy Hawker; Derrick Tokos; Dean Sawyer; CM Hall; Ryan Parker; Beatriz Botello; Spencer Nebel; Cynthia Jacobi; Dietmar Goebel  
 Subject: Re: Final Public Comment on Feb. 18 Agenda

From below it was my impression that since there was a cell tower height limitation in residential areas that cell towers were an allowed use in residential areas. But possibly I misunderstood Mr. Tokos when I was asking about the siting of towers overall and he was speaking about the specific site in question. Other jurisdictions have included cell transmission towers under Necessary Public Utilities which do appear in your attached charts (as conditional use) so I am still a bit confused. Possibly Tuesday evening Derrick can elaborate and also explain why, even if not an allowed use in residential areas, that there is no attention in the code (as far as I could ascertain) about stealth, removal of abandoned towers etc. etc.

14.10.020 General Exceptions to Building Height Limitations C. Stand alone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts, where allowed by this Ordinance, are limited in height to 50 feet in R-1, R-2, R-3, R-4, W-1, W-2, and C-2 zones; 100 feet in the P-1, C-1 and C-3 zones; 150 feet in the I-1, I-2 and I-3 zones. A taller structure or structural part referenced under this subsection may be allowed upon the issuance of a conditional use permit per Section 14.33 of this Code.

Thank you as always for responding to me. I think it useful to include the other councilors so they can evaluate this conversation along with us.

Regards, Mona

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From: "David Allen" <D.Allen@NewportOregon.gov>  
 Sent: Monday, February 17, 2020 12:42 PM  
 To: "Mona Linstromberg" <lindym@peak.org>  
 Cc: "Spencer Nebel" <S.Nebel@NewportOregon.gov>; "Peggy Hawker" <P.Hawker@NewportOregon.gov>; "Derrick Tokos" <D.Tokos@NewportOregon.gov>; "Dean Sawyer" <D.Sawyer@NewportOregon.gov>  
 Subject: Re: Final Public Comment on Feb. 18 Agenda

> Mona - thanks for providing the info and comment below. Just to  
> clarify the second paragraph, cell towers (which are included under  
> the use category "Communication Facilities") are allowed as a  
> permitted use in C-1, C-3, I-1, I-2, and I-3 zones. They are not  
> allowed in other zones, including residential (R-1 to R-4) and C-2  
> (tourist commercial), although a cell tower erected by a governmental  
> entity could be allowed in the P-1 zone. Attached are excerpts with  
> the provisions from the Newport municipal code. --David  
>  
> \_\_\_\_\_  
>  
> From: Mona Linstromberg [lindym@peak.org]  
> Sent: Sunday, February 16, 2020 8:44 PM  
> To: Dean Sawyer; David Allen; Ryan Parker; Cynthia Jacobi; Beatriz  
> Botello; CM Hall; Dietmar Goebel  
> Cc: Spencer Nebel; Peggy Hawker; Derrick Tokos  
> Subject: Final Public Comment on Feb. 18 Agenda  
>  
> Re: Final Public Comment on agenda: Need for Telecommunications  
> Ordinance  
>  
> Recently, when approaching the intersection of Hwy 101 driving east on  
> Olive St., out of nowhere there appeared a monopole cellular  
> transmission tower. What was once a pole reminiscent of a utility  
> pole with a modest extension and a singular tube on top was now a  
> one-hundred-foot monopole with a six panel antenna array.  
>  
> Asking at City Hall to review the application file, I was even more  
> amazed to discover that the City of Newport does not have a dedicated  
> telecommunications ordinance. What it does have is found under NMC  
> 14.10.020(C) General Exceptions to Building Height Limitations. Cell  
> phone transmission towers are a permitted use in every zone: 50',  
> 100', and 150' depending on zone with no notice to neighbors, no  
> public process (over 150' a conditional use permit is required). So,  
> you, too, could have a neighbor agreeing to lease his property to a  
> tower company in a residential area, probably nearer to your house than his own.  
>  
> The current tower is a co-location tower and already there is a  
> proposed twelve panel array in the works – in addition to the six.  
>  
> Because there is no telecommunications ordinance, this application lacks:  
>  
> 1. Bonding/insurance information covering abandonment/removal of tower.  
>  
> 2. RF signal propagation maps: propagation study is a predictive model  
> of signal strength and coverage.  
>  
> 3. Narrative as to capacity (finite number of calls or traffic data  
> that a base station can handle at once).  
>  
> 4. Narrative on the antenna meeting FCC NIER (nonionizing

- > electromagnetic radiation) standards or if the aggregate of the
- > co-located antenna arrays exceeds FCC regulations.
- >
- > 5. Visibility stds - Tower simulations as to visibility. Balloon
- > floats with notice can determine what will be seen and from where.
- >
- > 6. Visibility stds - Stealth options (mounted in a fashion so not
- > readily apparent to casual observer).
- >
- > 7. Visibility stds – preservation of scenic and historic areas.
- >
- > 8. PUBLIC PROCESS. Notice procedures that expand area noticed in a site
- > review or conditional use permit (because of greater visual impact).
- >
- > 9. Separation standards (e.g. height of tower from property line or
- > greater).
- >
- > 10. Landscape requirements, signage requirements (e.g hazardous
- > materials on site), fencing requirements.
- >
- > 11. Independent technical peer review at cost to applicant. Center
- > for Municipal Solutions (<http://www.telecomsol.com/www2/>) provides
- > this service.
- >
- > 12. Demonstration of compliance with City's noise ordinance
- >
- > 13. Etcetera
- >
- > At the City level, since there is no ordinance, it appears the City
- > thinks there is no need for a dedicated ordinance. Nothing could be
- > further from the truth. There is case law that, although the 1996
- > Federal Communications Act does not allow local jurisdictions to
- > factor in health impacts when considering the siting of these towers,
- > local jurisdictions have much to say in the siting of transmission
- > towers. "Consequently, the TCA expressly preserves local zoning
- > authority regarding the placement of equipment such as cell-phone
- > towers." [1] <file:///C:/Users/Mona/Documents/Newport%20cell%20tower%20of
- > first%20comment.docx#\_ftn1> There is much case law and continuing
- > lawsuits having to do with the 1996 Telecommunications Act and
- > subsequent actions by the FCC. However, only with a comprehensive
- > Telecommunications Ordinance can Newport hope to not replicate the
- > eyesore at the Hwy 20 gateway into Newport.
- >
- > I hope someday to read something similar: The City of Newport hereby
- > finds and declares it to be the public policy of the City to minimize
- > the visual and environmental impacts of wireless communications
- > facilities in the process of allowing for adequate and
- > nondiscriminatory wireless service throughout the City in accordance with the Telecommunications Act of 1996.
- >
- > To achieve these goals, the City of Newport shall, by way of this
- > article, seek to promote wireless facilities that are compatible with
- > surrounding land uses and that protect and retain the attractiveness,

> health, safety, general welfare and property values of the community  
 > by establishing standards for the location, siting, design and  
 > vegetative screening of communication antennas, communication  
 > buildings, towers and alternative transmission support  
 > structures.[2]<file:///C:/Users/Mona/Documents/Newport%20cell%20tower%  
 > 20first%20comment.docx#\_ftn2>  
 >  
 > To achieve those and other goals, Newport needs a meaningful  
 > Telecommunication Ordinance. Please schedule a work session for this  
 > along with the inclusion of a small cell siting provision. Also  
 > consider issuing a similar resolution to Eugene's RESOLUTION NO. 5264:  
 > A RESOLUTION REQUESTING THE FEDERAL GOVERNMENT TO UPDATE STUDIES ON  
 > POTENTIAL HEALTH RISKS OF 5G RADIO FREQUENCY WIRELESS EMISSIONS AND  
 > PUBLISH FINDINGS, AS FEDERAL GUIDELINES PUSH FOR MORE RAPID DEPLOYMENT OF 5G. (4/17/2019).  
 > Attached.  
 >  
 > Thank you for your consideration,  
 >  
 > Mona Linstromberg  
 > [3]<file:///C:/Users/Mona/Documents/Newport%20cell%20tower%20first%20c  
 > omment.docx#\_ftn3>  
 >  
 > Family home: 1442 NW Spring St., Newport, OR  
 >  
 > \_\_\_\_\_  
 >  
 > [1]<file:///C:/Users/Mona/Documents/Newport%20cell%20tower%20first%20c  
 > omment.docx#\_ftnref1> US District Court D. Oregon, Voice Stream v City  
 > of Hillsboro (2004)  
 >  
 > [2]<file:///C:/Users/Mona/Documents/Newport%20cell%20tower%20first%20c  
 > omment.docx#\_ftnref2> From purpose and findings, Town of Southhampton,  
 > NY Wireless Communications, example.  
 >  
 > [3]<file:///C:/Users/Mona/Documents/Newport%20cell%20tower%20first%20c  
 > omment.docx#\_ftnref3> I was active in this field from December 2000,  
 > when a 190' cell tower was proposed near my home in Lane County, until  
 > 2017. There was no ordinance in place in Lane County, and it took me  
 > an entire year to defeat every proposal by that corporation in Lincoln  
 > County, which did have an ordinance. That application was pulled in  
 > 2001 after a request that I stop. It took county residents two more  
 > years to get an ordinance passed in Lane County. I contested fourteen  
 > inappropriately sited transmission towers with applications being  
 > pulled, modified, or denied. The final two were passed, and I was  
 > financially unable to contest those cases.  
 >  
 >  
 > Sent via my totally safe HARD WIRED internet connection

“Residential Facilities” and permitted in R-3 and R-4 zoning districts.

8. Communication Facilities

- a. Characteristics. Includes facilities designed to provide signals or messages through the use of electronic and telephone devices. Includes all equipment, machinery, structures (e.g. towers) or supporting elements necessary to produce signals.
- b. Examples. Examples include broadcast towers, communication/cell towers, and point to point microwave towers.
- c. Exceptions.
  - i. Receive only antennae are not included in this category.
  - ii. Radio and television studios are classified in the Office category.
  - iii. Radio Frequency Transmission Facilities that are public safety facilities are classified as Basic Utilities.

14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.

"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

		C-1	C-2*	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X
2.	Retails Sales and Service						
	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P**	P	P	C	X



	e. Repair-oriented	P	X	P	P	P	X
3.	Major Event Entertainment	C	C	P	P	C	X
4.	Vehicle Repair	X	X	P	P	P	X
5.	Self-Service Storage	X	X	P	P	P	X
6.	Parking Facility	P	P	P	P	P	P
7.	Contractors and Industrial Service	X	X	P	P	P	P
8.	Manufacturing and Production						
	a. Light Manufacturing	X	X	C	P	P	P
	b. Heavy Manufacturing	X	X	X	X	C	P
9.	Warehouse, Freight Movement, & Distribution	X	X	P	P	P	P
10.	Wholesale Sales	X	X	P	P	P	P
11.	Waste and Recycling Related	C	C	C	C	C	C
12.	Basic Utilities and Roads	P	P	P	P	P	P
13.	Utility, Road and Transit Corridors	C	C	C	C	C	C
14.	Community Service	P	C	P	P	C	X
15.	Daycare Facility	P	C	P	P	P	X
16.	Educational Institutions						
	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
17.	Hospitals	C	C	C	X	X	X
18.	Courts, Jails, and Detention Facilities	X	X	P	C	X	X
19.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
20.	Communication Facilities	P	X	P	P	P	P
21.	Residences on Floors Other than Street Grade	P	P*	P	X	X	X

*\*Uses in excess of 2,000 square feet of gross floor area are Conditional Uses within the Historic Nye Beach Design Review District. Residential Uses within the Historic Nye Beach Design Review District are subject to limitations as set forth in NMC Chapter 14.30.  
 \*\*Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.*

**14.03.080 Water-dependent and Water-related Uses.**

The following list sets forth the uses allowed with the water-dependent and water-related land use classifications. Uses not identified herein are not allowed.

"P" = Permitted uses.

"C" = Conditional uses permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		W-1	W-2
1.	Aquaculture	P	P
2.	Boat Rentals, Sport Fishing and Charter Boat Services	P	P
3.	Docks, Wharves, Piers	P	P
4.	Dry Dock, Boat Repair, Marine Service, and Marine Railway Facilities	P	P
5.	Fuel Facilities for Boats or Ships	P	P
6.	Marinas and Port Facilities	P	P
7.	Seafood Processing and Packaging Plants	P	P
8.	Terminal Facilities for Loading and Unloading Ships and Barges	P	P
9.	Marine Research and Education Facilities of Observation, Sampling, Recording, or Experimentation on or Near the Water	P	P
10.	Ice Production and Sales, Refrigeration Repair, and Cold Storage to Serve the Seafood Industry	C	P
11.	Boat Building and Marine Equipment Manufacture	C	P
12.	Parking Lots	C	P
13.	Warehouses	C	P
14.	Uses Allowed in the Adjacent Estuarine Management Unit	C	P
15.	Water-dependent Uses That Meet the Intent of the W-1 District	C	P
16.	Bait, Tackle, and Sporting Goods Stores Specializing in Water-related Merchandise	X	P
17.	Seafood Markets	X	P
18.	Uses Permitted Outright in a C-2 District	X	C
19.	Manufacturing in Conjunction with Uses X C Permitted Outright in a C-2 District	X	C
20.	Offices Not On the Ground Floor of an Existing Building	X	C
21.	Residences on Floors Other than Street Grade	X	C

*(Sections 14.03.070 and 14.03.080 adopted by Ordinance No. 2125, adopted on December 4, 2017; effective January 3, 2018.)*

#### 14.03.090 Uses in State Park Master Plans.

\* Where the W-1 and/or W-2 zones are applied to properties that are owned or managed by the Oregon Parks and Recreation Department within a state park with a master plan that has been approved by the City of Newport, only those uses that are consistent with the city's approval of the master plan are permitted. Such uses are permitted through the applicable development

review procedures set forth in this ordinance provided that the uses comply with the design standards in the master plan and with other applicable standards.

**14.03.100 Public Uses**

. The following list sets forth the uses allowed within the public land use classification. Uses not identified herein are not allowed.

"P" = Permitted Uses.

"C" = Conditional uses; permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		P-1	P2	P-3
1.	Public Parks	P	P	P
2.	Public Open Space	P	P	P
3.	Public Schools, Colleges, or Universities	P	X	X
4.	Any Building or Structure Erected by a Governmental Entity	P	X	X
5.	Community Buildings	P	X	X
6.	Fairgrounds	P	X	X
7.	Public Cemeteries	P	P	X
8.	Water & Wastewater Treatment Plants	P	X	X
9.	Performing Arts Centers	P	X	X
10.	Visual Arts Centers	P	X	X
11.	Senior Centers	P	X	X
12.	Airport and Accessory Structures	P	X	X
13.	Public Golf Courses	P	P	X
14.	City Halls	P	X	X
15.	County Courthouses	P	X	X
16.	Jails and Juvenile Detention Facilities	P	X	X
17.	City or County Maintenance Facilities	P	X	X
18.	Publicly Owned Recreational Vehicle Parks	C	C	X
19.	Public Museums	P	X	X
20.	Public Restrooms	P	P	X
21.	Recreation Equipment	P	P	X
22.	Post Office	P	X	X
23.	Parking Lots	P	P	X
24.	Public Hospitals	P	X	X
25.	Trails, paths, bike paths, walkways, etc.	P	P	P
26.	Water Storage Facilities	P	X	X
27.	Public Libraries	P	X	X
28.	Fire Stations	P	X	X

29.	Police Stations	P	X	X
30.	Accessory Structures for Any of the Above	P	P	P

*\*Added by Ordinance No. 1858 (9-2-03).*

#### 14.03.110 Uses in State Park Master Plans.\*

Where the P-1, P-2, and/or P-3 zones are applied to properties that are owned or managed by the Oregon Parks and Recreation Department within a state park with a master plan that has been approved by the City of Newport, only those uses that are consistent with the city's approval of the master plan are permitted. Such uses are permitted through the applicable development review procedures set forth in this ordinance provided that the uses comply with the design standards in the master plan and with other applicable standards.

*\*Added by Ordinance No. 1858 (9-2-03).*



In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality.

#### 14.03.050 Residential Uses.

The following list sets forth the uses allowed within the residential land use classification. Uses not identified herein are not allowed. Short-term rentals are permitted uses in the City of Newport's R-1, R-2, R-3 and R-4 zone districts subject to requirements of [Chapter 14.25](#).

"P" = Permitted uses.

"C" = Conditional uses; permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		R-1	R-2	R-3	R-4
A.	Residential				
	1. Single-Family	P	P	P	P
	2. Two-family	X	P	P	P
	3. Multi-family	X	X	P	P
	4. Manufactured Homes*	P	P	P	P
	5. Mobile Home Park	X	P	P	P
B.	Accessory Dwelling Units	P	P	P	P
	(B. was added on the adoption of Ordinance No 255 on June 17, 2013; and subsequent sections relettered accordingly. Effective July 17, 2013.)				
C.	Accessory Uses	P	P	P	P
D.	Home Occupations	P	P	P	P
E.	Community Services				
	1. Parks	P	P	P	P
	2. Publicly Owned Recreation Facilities	C	C	C	C
	3. Libraries	C	C	C	C
	4. Utility Substations	C	C	C	C
	5. Public or Private Schools	C	C	C	P
	6. Child Care Facilities	P	P	P	P
	7. Day Care Facilities	C	C	C	C
	8. Churches	C	C	C	C
F.	Residential Care Homes	P	P	P	P
G.	Nursing Homes	X	X	C	P
H.	Bed and Breakfast Inns	X	X	C	C
I.	Motels and Hotels	X	X	X	C
J.	Professional Offices	X	X	X	C
K.	Rooming and Boarding Houses	X	X	C	P
L.	Beauty and Barber Shops	X	X	X	C
M.	Colleges and Universities	C	C	C	C
N.	Hospitals	X	X	X	P
O.	Membership Organizations	X	X	X	p
P.	Museums	X	X	X	P

Q.	Condominiums	X	P	P	P
R.	Hostels	X	X	X	C
S.	Golf Courses	C	C	C	X
T.	Recreational Vehicle Parks	X	X	X	C
U.	Necessary Public Utilities and Public Service Uses or Structures	C	C	C	C
V.	Residential Facility*	X	X	P	P
W.	Movies Theaters**	X	X	X	C
X.	Assisted Living Facilities***	X	C	P	P
Y.	Bicycle Shop****	X	X	X	C

*(Section 14.03.050 was amended by Ordinance No. 2144, adopted on May 6, 2019: effective May 7, 2019.)*

### 14.03.060 Commercial and Industrial Districts.

The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

*\* Added by Ordinance No. 1622 (10-7-91).*

*\*\* Added by Ordinance No. 1680 (8-2-93).*

*\*\*\* Added by Ordinance No. 1759 (1-21-97).*

*\*\*\*\* Added by Ordinance No. 1861 (10-6-03).*

*\*\*\*\*\* Amended by Ordinance No. 1989 (1-1-10).*

- A. Application of Use Categories. Uses are to be assigned to the category whose “Characteristics” most closely describe the nature of the primary use. Developments may have more than one primary use. “Use Examples” are provided for each use category. The names of uses on the list are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is “Wholesale Liquidation” but that sells mostly to consumers would be included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description on the Retail Sales and Service category.
  
- B. Interpretation. When a use’s category is not clearly identifiable, the Community Development Director shall determine the applicable use category under a Type I decision-making process as provided by [Section 14.52](#). The following factors are to be considered to determine what use category the use is in, and whether or not the activities constitute a primary use.





## Background

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 mandates that a state or local government approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Section 6409 does not mandate approval for collocations and modifications when the support structure was constructed or deployed without proper local review, was not required to undergo local review or involves equipment that was not properly approved. This rule attempts to preserve the local government's authority to review wireless facilities in the first instance and withhold statutory benefits under Section 6409 in cases where the site operator deployed equipment without all required prior approvals.

In 2014, the FCC adopted regulations (referred to later as the "2014 Infrastructure Order") to interpret key terms in this statute and impose certain substantive and procedural limitations on local review. When an applicant requests approval pursuant to Section 6409, the state or local government (1) may only require the applicant to provide information reasonably related to the determination on whether the proposed project meets the criteria for an eligible facilities request; and (2) must approve or deny the application within 60 days from submittal. The shot clock may be tolled for incomplete applications or by mutual consent. If the local government fails to act within the 60-day shot clock, the applicant may deem the application granted by written notice. Local governments may then challenge the deemed-granted notice.

With respect to application requirements, the 2014 Infrastructure Order preserves local government flexibility in determining what information or documentation to require for a complete application. However, the FCC specifically prohibited requirements to demonstrate the need for the proposed modification. The FCC also **encouraged but did not require** local governments to combine the Section 6409 review with other permit review processes (such as entitlement and construction).

### *Industry Proposed Rulemaking*

On August 27, WIA (a trade group that lobbies for the wireless industry) petitioned the FCC for a declaratory ruling to alter the 2014 Infrastructure Order and 6409 regulations. On September 9, CTIA filed a similar petition that piggybacks off WIA and requests essentially the same rule changes or clarifications.

### *Oregon Named Bad Actors*

In the Petition of Rulemaking, over forty cities nationwide were named "bad actors" by the industry. Here is what the industry had complaints about in Oregon.

- Portland – WIA claimed that the city has an inappropriate fee for wireless site applications.
- Beaverton – WIA claimed the city's fees for modifications of wireless sites are too high and that it should not be allowed to issue conditional approvals to require conduit to be contained inside existing poles.
- Portland and Lane County – WIA claim that cities should not be allowed to require RF reports to ensure compliance with federal standards for local review and approval (note: this is legal but the industry wants to change the law because compliance is time consuming).

### **Declaratory Ruling at June 9<sup>th</sup> FCC Meeting**

On June 9<sup>th</sup>, 2020 the Federal Communications Commission passed the "5G Upgrade Order" (referred throughout as "the Order"). The Order went into effect on June 10, 2020. Cities may need to review their wireless siting ordinances, regulations, processes and/or permit forms to comply with the Order. Additionally, the FCC provided a Notice of Proposed Rulemaking that seeks comments on proposed rules



that would expand must-approve placement of wireless facilities in locations that have never been reviewed or approved for wireless deployments.

The 5G Upgrade Order rules apply to 6409 wireless facilities (think macro towers and base stations). Some of the FCC Commissioners claimed that they wanted to update and “clarify” rules applying to non-small cells now that the small cell order has been in play for a few years. The major changes affect the following:

### Shot Clocks

The Order explains “for purposes of our shot clock and deemed granted rules, an applicant has effectively submitted a request for approval that triggers the running of the shot clock when it satisfies both of the following criteria: (1) the applicant takes the first procedural step that the local jurisdiction requires as part of its applicable regulatory review process under section 6409(a), and, to the extent it has not done so as part of the first required procedural step, (2) the applicant submits written documentation addressing the applicable eligible facilities request criteria, including that the proposed modification would not cause a ‘substantial change’ to the existing structure.” The following are key clarifications cities should be aware of:

- The first procedural step cannot be outside of the applicant’s control and must be objectively verifiable. For example, the first step in the process could be a meeting with city staff. The applicant would satisfy this step and start the clock by making a written request for the meeting, if and only if they also provide the requisite documentation. **Note: the clock does not start when the meeting happens. It starts when the applicant asks for the meeting because the ask is within the applicant’s control.**
- If there is a combination or a sequencing of steps, the shot clock would begin when the applicant starts taking any one of the actions required of them.

Example: A city defines the first step of its process as separate consultations with a citizens’ association, a historic preservation review board, and the local government staff, an applicant will trigger the shot clock by taking any one of those actions, along with providing the requisite documentation under our rules.

- Cities may use conditional use permits, variances, or similar types of authorizations under standard zoning or siting rules, but these cannot be used to delay the start of the shot clock. The clock will begin to run when the applicant takes the first step in the jurisdiction’s 6409(a) approval process and will not be paused (tolled) for incompleteness based on requirements for these other types of authorizations. **Note: This means that the city will need to process all permits and other authorizations in the 60-day shot clock window or else the facility will be deemed granted.**

### Separation of Towers

A facility would qualify as an eligible facilities request, and a locality would be required to approve it, if a modification on a tower outside of the public rights-of-way if the change **does not** increase the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater. For towers outside the rights of way under Section 1.6100(b)(7)(i), the phrase “separation from the nearest existing antenna” means “the distance from the top of the highest existing antenna on the tower to the bottom of the proposed new antenna to be deployed above it.” **Note: the height of the new antenna itself should not be included when calculating the allowable height increase.**

### Equipment Cabinets

The new order defines what an “equipment cabinet” is and makes clear that there is no cumulative limit

on equipment cabinets they are only a maximum number of additional cabinets under each separate eligible facilities request. That maximum number of additional cabinets per each eligible facilities request is four.

### Concealment Elements

The order defines a concealment element as “elements of a stealth-designed facility intended to make the facility look like something other than a wireless tower or base station.” (For example, the facility is made to look like a tree or a clock tower). For the concealment element to apply to the modification or eligible facilities request, it must have been part of the facility that the locality approved in its prior review. Concealment is defeated if the proposed modification would “cause a reasonable person to view the structure’s intended stealth design as no longer effective after the modification.”

### Conditions of Siting Approvals

Conditions associated with the siting approvals may relate to improving the aesthetics, or minimizing the visual impact, of non-stealth facilities but there must be express evidence that at the time of approval the city required the feature and conditioned approval upon its continuing existence for noncompliance with the condition to disqualify a modification from being an eligible facilities request.

The Order gives a few specific examples:

- “For example, a local government’s condition of approval that requires a specifically sized shroud around an antenna could limit an increase in antenna size that is otherwise permissible under section 1.6100(b)(7)(i). Under section 1.6100(b)(7)(vi), however, the size limit of the shroud would not be enforceable if it purported to prevent a modification to add a larger antenna, but a local government could enforce its shrouding condition if the provider reasonably could install a larger shroud to cover the larger antenna and thus meet the purpose of the condition.”
- “If a city has an aesthetic-related condition that specified a three-foot shroud cover for a three-foot antenna, the city could not prevent the replacement of the original antenna with a four-foot antenna otherwise permissible under section 1.6100(b)(7)(i) because the new antenna cannot fit in the shroud. As described above, the city could enforce its shrouding condition if the provider reasonably could install a four-foot shroud to cover the new four-foot antenna. The city also could enforce a shrouding requirement that is not size-specific and that does not limit modifications allowed under sections 1.6100(b)(7)(i)-(iv).”
- Existing walls and fences around towers are not concealment elements, but rather aesthetic conditions under section 1.6100(b)(7)(vi). “[I]f there were express evidence that the wall or fence were conditions of approval to fully obscure the original equipment from view, the locality may require a provider to make reasonable efforts to extend the wall or fence to maintain the covering of the equipment.”
- “If an original siting approval specified that a tower must remain hidden behind a tree line, a proposed modification within the thresholds of section 1.6100(b)(7)(i)-(iv) that makes the tower visible above the tree line would be permitted under section 1.6100(b)(7)(vi), because the provider cannot reasonably replace a grove of mature trees with a grove of taller mature trees to maintain the absolute hiding of the tower.”

### Environmental Assessments

While environmental assessments were not originally addressed in Section 6409, the FCC included it in the Order. The FCC explains “that an environmental assessment is not needed when the FCC and applicants have entered into a memorandum of agreement to mitigate effects of a proposed undertaking on historic properties, consistent with 36 CFR § 800.6(b), if the only basis for the preparation of an environmental assessment was the potential for significant effects on such properties.”

### **Notice of Proposed Rulemaking**

The Commission is also seeking comment on changes to rules regarding excavation or deployment outside the boundaries of an existing tower site, including the definition of the boundaries of a tower site, which would affect whether certain modifications of existing structures qualify for streamlined section 6409(a) review. Comments will be due 20 days after publication in the Federal Register and replies comments are due 10 days after the comment deadline.

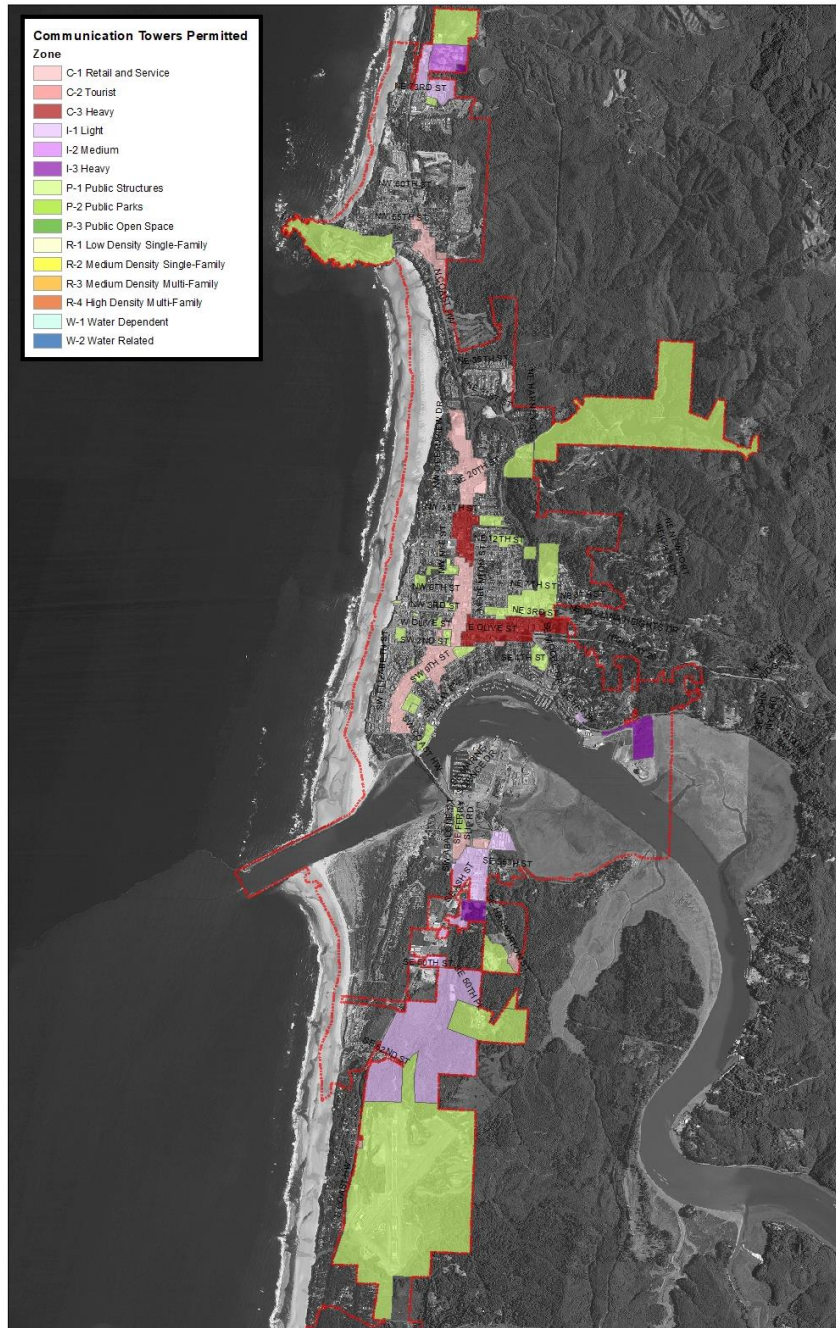
# LOC Model Code, FCC Rulings, and Local Options for Regulating Wireless Facilities

City of Newport Planning Commission  
August 10, 2020 Work Session

## Existing City Requirements (Outside ROW)

- Wireless facilities include towers, base stations, antennas, and antenna equipment (e.g. switches, wiring, cabling, power sources, shelters/cabinets)
- Regulated as a land use type in the City of Newport's Zoning Ordinance
- Defined as "Communication Facilities" permitted outright in C-1, C-3, I-1, I-2, and I-3 zones
- Government entities may erect "Communication Facilities" on P-1 zoned properties
- "Communication Facilities" can also be an outright permitted accessory use if ancillary to the principal use of a property (e.g. an antenna array for exclusive use of a marine research facility)
- Height limited to 100-feet in P-1, C-1, and C-3 zones and 150-feet in industrial zones
- Limited to 35-feet without variance in an airport approach surface. Review is coordinated with ODOT Aeronautics Division
- Subject to construction standards contained in the 2018 International Building Code

# Areas Where Communication Facilities Permitted



## Existing City Requirements (Inside ROW)

- Providers subject to a franchise agreement with the City of Newport spelling out terms of permitted use of the right-of-way (ROW)
- Franchise includes privilege tax
- Limited wireless footprint at present
- Requires permit from Public Works to coordinate and address utility conflicts
- Code contains language allowing City the option of requiring all infrastructure to be undergrounded

# Federal Nexus

- Preempts local governments from regulating potential health effects of wireless facilities and requires expedited review of smaller scale projects (i.e. eligible facilities)
- Relevant Legislation includes:
  - Section 704 of the Telecommunications Act of 1996
  - Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012
- Federal Communications Commission (FCC) sets out federal regulations implementing the legislation, the latest being the “Small Cell Order” of 2018 and the “5G Upgrade Order” of 2020
- FCC objective is to accelerate broadband deployment by removing what it sees as burdensome state and local regulatory barriers



## What are Eligible Facilities?

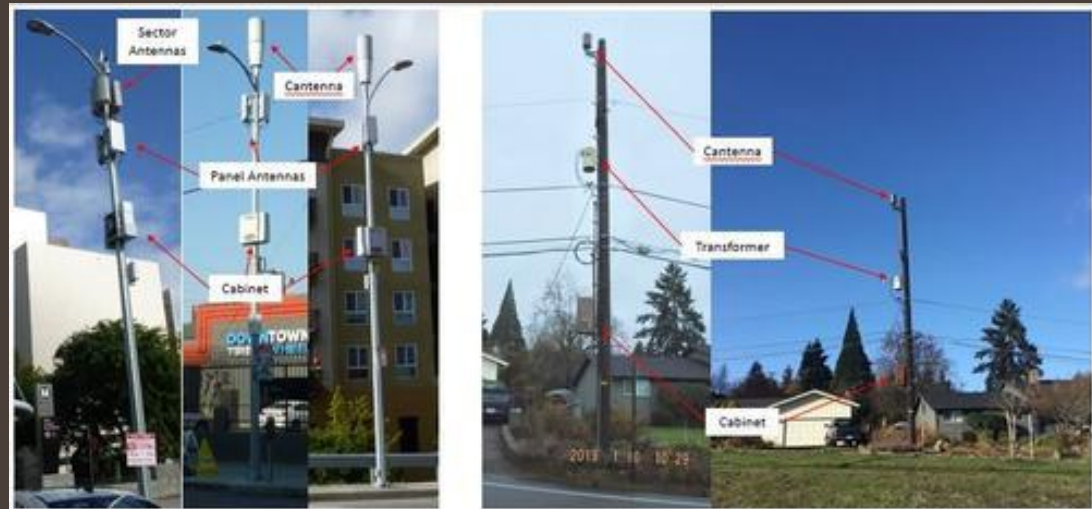
- Section 6409(a) defines eligible facilities as including “modifications and colocations of wireless transmission equipment on existing towers or base stations that do not result in a *substantial change* to the physical dimensions of such tower or base station”
- Local governments may require applications of this nature to meet certain standards, but they cannot deny them

# Substantial Change (FCC Rulings)

- An increase in the height of a tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater
- For other eligible support structures, an increase in height by more than 10% or more than 10 feet, whichever is greater
- An appurtenance to the body of a tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater
- For other eligible support structures, an appurtenance added to the body of the structure that would protrude from the edge of the structure by more than 6 feet
- Installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets;
- For towers in the public rights-of-way and base stations, installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure
- Excavation or deployment outside the current site
- A change that would defeat the concealment elements of the eligible support structure
- A change that does not comply with conditions associated with the original siting approval of the structure to be modified

# Small Wireless Facilities

- Focus of the FCC's most recent rulemaking and League of Oregon Cities Model Ordinance and Design Guidelines
- Will be a component of the 5G roll out, presently occurring in larger municipalities
- Equipment will need to be clustered closer together and will have a smaller footprint
- Will rely upon collocation on existing structures in rights-of-way (namely utility poles)
- Is treated like an eligible facility, subject to expedited review and mandatory approval



# Small Wireless Facilities

## (Definition)

- “Small wireless facility” means a facility that meets each of the following conditions per 47 C.F.R. § 1.6002(l), as may be amended or superseded:
  - (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,
  - (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,
  - (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,
  - (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

## Shot Clock (Review Timeframe)

- Period of time within which a local government must make a decision (including any appeals)
- Review timelines are as follows:
  - Application to collocate a Small Wireless Facility using an existing structure: 60 days.
  - Application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.
  - Application to deploy a Small Wireless Facility using a new structure: 90 days.
  - Application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.
- Clock starts upon application and is tolled for the period of time an application is found to be incomplete
- Failure to adhere to the shot clock open the door for the applicant to go to court to compel local government approval

## Reasons to Update the City Code

- Distinguish between wireless facilities subject to expedited review and those that are not (i.e. “shot clocks”) and codify procedures
- Address other issues in the FCC rulings, such as application fee limits (\$500 for an application covering up to five small cell attachments; \$100 for each additional attachment; and \$1,000 for a new pole containing small cell equipment. \$270 per unit for reoccurring costs, such as ROW maintenance
- Establish standards for small wireless facilities in ROW now that it is a reality (e.g. interferes with ADA access, clear vision areas, traffic controls, etc.)
- Identify if the City should modify its regulations where it has the discretion to do so. Examples include siting, height limits, setbacks, concealment requirements (within FCC limits)

Thoughts?



# FAQ on Small Wireless Facilities

AUGUST 2020

This document was produced in coordination with:





**DISCLAIMER**

At the time of this publication the FCC Small Cell Order is in effect. However, there is active litigation going on related to the FCC Small Cell Order which means some of this information is subject to change in the future.

## Background

On January 31, 2017, Federal Communications Commission (“FCC”) Chairman Ajit Pai established a Broadband Deployment Advisory Committee (“BDAC”), which he tasked with making recommendations to the FCC on ways to accelerate the deployment of broadband by reducing or removing regulatory barriers to infrastructure investment. On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order (FCC 18-133, identified throughout this document as “Small Cell Order” or “FCC Order”) that significantly limits local authority over small wireless infrastructure deployment and fees for use of the rights of way. Most provisions of the FCC Order took effect January 14, 2019. Under the FCC Order, there are prescribed definitions of small wireless facilities, as well as criteria for aesthetic or design standards. The definitions within the FCC Order reflect that such facilities may not result in human exposure to radiofrequency (“RF”) radiation in excess of applicable standards in the FCC’s rules. Currently, the League of Oregon Cities is disputing the Small Cell Order in the 9<sup>th</sup> Circuit Court along with other local governments and the National Association of Telecommunications Officers and Advisors (NATOA).

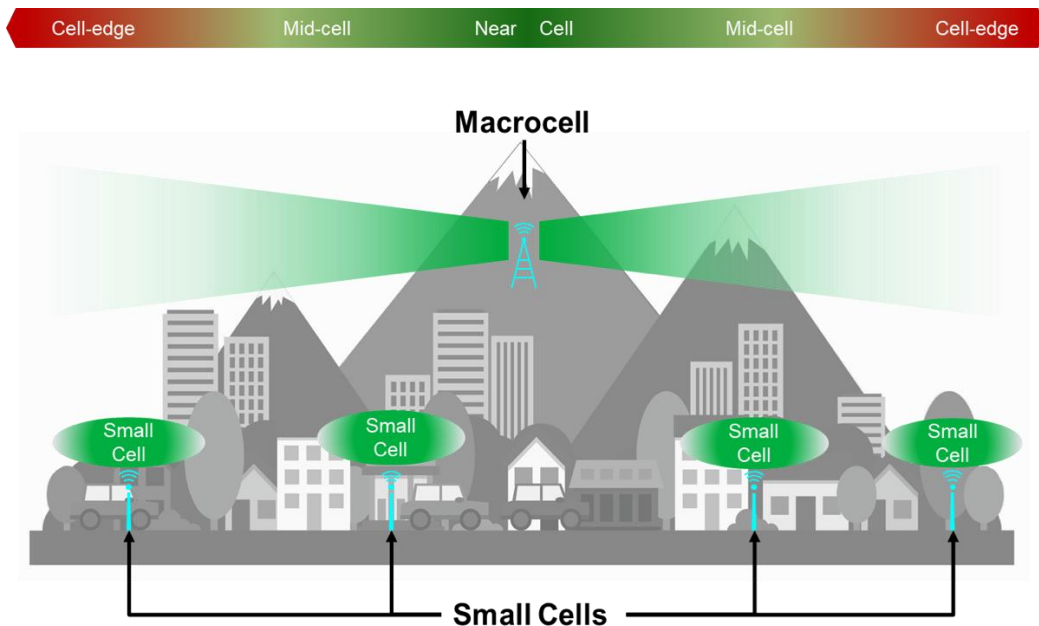
## LOC FAQ on Small Wireless Facilities

As the demand for connectivity increases and the Internet of Things (“IoT”) proliferates with the connection of millions of new smart devices to the internet, cities are facing the reality that to meet the increasing demands of residents and businesses, more wireless facilities and infrastructure needs to be deployed. With that reality, city officials must also reconcile a number of policy, public safety, land-use and right-of-way considerations. As cities navigate this rapidly-changing policy environment and work to reconcile issues from wireless and infrastructure providers and community residents, a number of considerations for the different stakeholders begin to emerge.

To help in this time of change, the League of Oregon Cities, in coordination with many cities, as well as representatives from Verizon, AT&T, and T-Mobile, met and worked diligently from January 2019 to May 2020 to discuss and craft a [model code](#), [model design standards](#), and an informational document relating to small wireless facilities. Note: small wireless facilities are also referred to as small cells. This document serves as that informational document and provides an overview of small cell technology, deployment, and infrastructure. The intended audience of this document is city staff, planning commissioners, elected officials and community members.

## 1. What is a Small Wireless Facility?

Small wireless facilities, also known as small cells, are just what the name implies – they have smaller wireless radios and antennas than macrocell sites (such as the typical wireless cell tower). Small wireless facilities have a range that varies from a few hundred feet to upwards of 1,000 feet, depending on terrain, vegetation, and the radio frequencies used. These lower power facilities primarily add capacity in high-traffic areas, dense urban areas, and suburban communities, where people are using smartphones and other devices, and are not a substitute for macrocell sites. Small wireless facilities can include 4G and 5G antennas and equipment.



Increasing wireless traffic from data usage, particularly video, requires more wireless facilities, similar to how increased vehicle traffic necessitates additional infrastructure. Increasing demand from wireless users is overburdening existing macrocell sites resulting in congestion when too many users try to use the network's capacity at the same time. Small wireless facilities provide much-needed capacity to relieve this congestion.

## 2. 5G - How Did We Get Here?

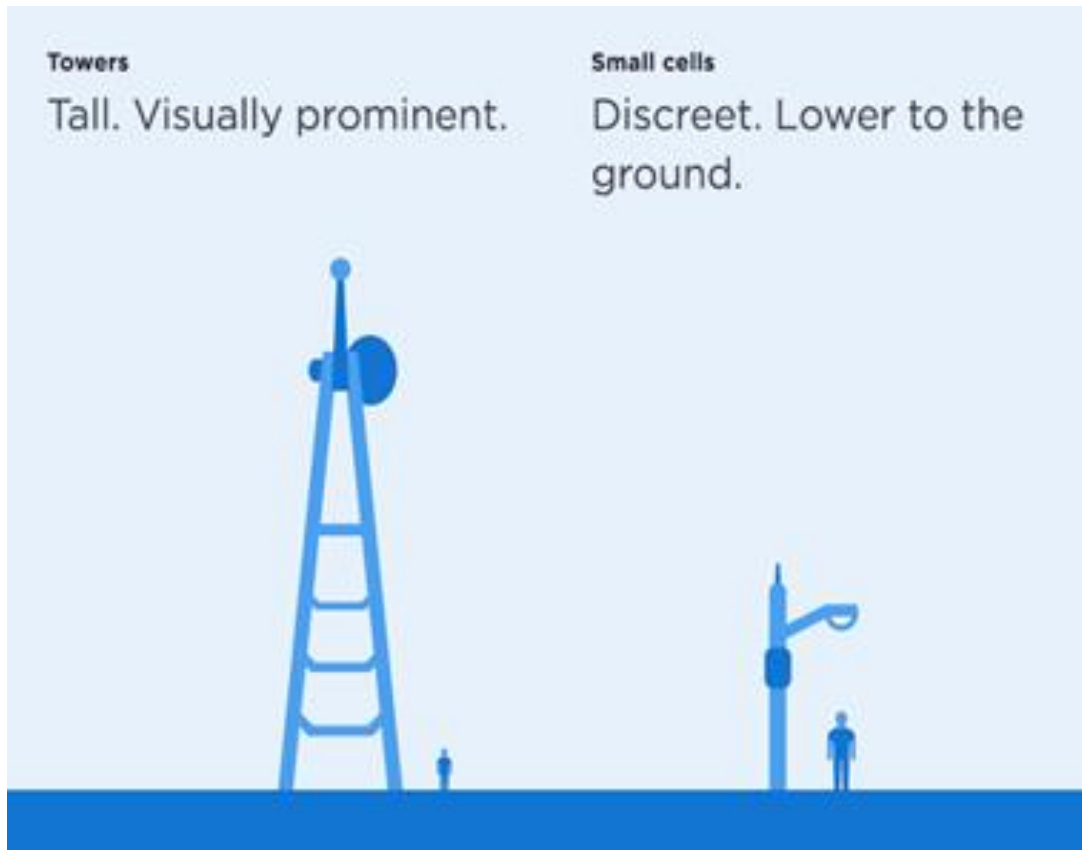
Technology is constantly changing and so are the standards that define wireless communications. The first standard or generation of wireless communication was known as 1G (first generation), which provided analog voice calling on cellular devices. With 2G came digital voice calling and the ability to send texts. 3G added data to the mix along with the first smartphones. 4G (or LTE) is the current standard that allows for faster data transfers, making video calls and other multimedia solutions possible. With each new generation of cellular technology, older standards are eventually phased out. This migration usually takes many years with multiple standards and equipment in use at the same time.

What's the difference between 5G and the other Gs?				
1G	2G	3G	4G	5G
<b>VOICE</b>	<b>SMS</b>	<b>DATA &amp; APPS</b>	<b>VIDEO &amp; SPEED</b>	<b>TRANSFORMATION</b>
We first talk without the wires – on the move, with analog technology.	SMS messaging debuts, bringing us a new way to chat and creating a new language to chat with.	We begin sharing snapshots of our lives, sending images thanks to higher data transfers.	Video calls and new businesses are possible with wireless broadband on our smart devices.	From wireless home broadband AR/VR to mobile gaming and more, 5G will change how we live, learn, work and play.

The 5th Generation technology (5G) is a change in standards for wireless communication to increase capacity, efficiency, responsiveness, and download speeds. This technology is planned to accommodate smart communities, IoT, immersive education, connected cars, remote medicine, virtual reality, remote learning, etc. Carriers deploying 5G may change the type of antennas and wireless equipment currently used to connect all the 5G devices. 5G is expected to be up to 100 times faster and five times more responsive than the previous generation, 4G.

### 3. What Does Small Wireless Technology Look Like?

The current FCC definition of a “small wireless facility” caps the height of the facility and its support structure at 50 feet or 10% of the height of adjacent structures, whichever is greater, and establishes volumetric limits – no more than three cubic feet in volume for each antenna and no more than 28 cubic feet in volume for all other associated equipment. These standards recognize that small wireless facilities may need to differ by provider and situation, but ensure that small wireless facilities are indeed smaller than the cell towers most people are familiar with today, which are known as macro towers.



A typical small wireless facility deployment on a wood utility pole may involve antennas within a cylindrical enclosure, cylindrical omnidirectional antennas, and/or small panel antennas at either the top or middle of the pole to work around the existing electrical wires. Fiber and power lines, enclosed in conduit, connect the antennas to an equipment box, which houses the radios and other equipment. The antennas and equipment configuration may vary from provider to provider. For example, some providers may use panel antennas, which require the ability to tilt or position the antennas to control the direction of the signal; others may use the cantenna, which transmits in a roughly 360 degree pattern without the ability to tilt/position the antennas. Some providers may utilize a single enclosure that houses both the radios and antennas.

5G deployment may require antennas and equipment in addition to those installed for 4G and will be mounted in a variety of configurations. It is important to note that some 5G small wireless antennas cannot operate if covered or painted, but generally come in colors compatible with most installations.

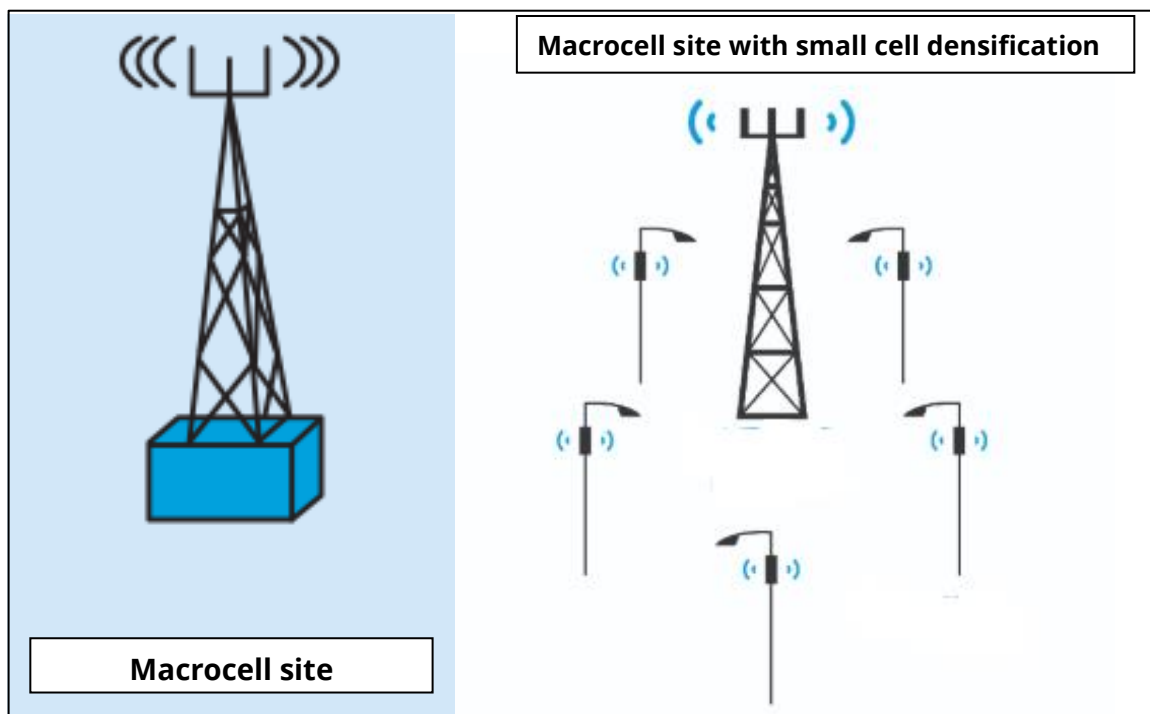
Small wireless facilities can also be placed on light standards or metal stand-alone poles, with antennas located at the top or the side of the pole. Small wireless facility equipment can either be attached to the pole within an enclosure or housed within a larger diameter pole or pole base.

#### 4. As Current Small Wireless Technology Becomes Outdated, What will the Next Generation of Technology Look Like?

From what we currently know, it is probable that small wireless facilities are as small as the technology will be for the foreseeable future. 4G/5G small cell installations will likely continue to be deployed for many years to come, because any new generation of technology may require updates to network equipment, infrastructure and consumer devices.

#### 5. What is “Densification”?

Densification is the process of adding small wireless facilities – much smaller-scale antennas and equipment than traditional macrocell sites. Small wireless facilities can be deployed on street lights and utility poles in the right-of-way. It is noteworthy that small wireless facilities are additive to existing wireless infrastructure.



#### 6. How Does the Carrier Decide Where to Put the Small Wireless Sites? What Factors are Involved and How Big is the Search?

To meet customer needs and expectations, wireless providers must expand and enhance their networks where users live, work, travel and play. Wireless engineers gather information from many sources and analyze the data to determine the best location based on customer needs, terrain, and modeling results. Attaching to existing structures, such as street lights and utility poles, is generally considered first. Network teams perform extensive searches in the area needing improvement to find a location that will meet technical needs while ensuring the potential location complies with applicable laws.

## 7. What is the Likely per Capita Number of Small Wireless Facilities Over Time?

Wireless providers do not build small wireless facilities to meet per capita numbers, but rather to fulfill the data/voice transmission needs of consumers in the area (see also response to question #6 above).

## 8. Will There be Noise Emitted from These Sites?

The sound is expected to be negligible from the ground and facilities are required to comply with applicable noise regulations. Small wireless facilities are generally either passively cooled, so they make no sound, or have very small fans to cool the equipment.

## 9. Why is Investment in Wireless Networks Important?

There are many reasons to invest in wireless networks, including:

- 90% of U.S. households use wireless service. With this increase in demand from users at home and those who work from home comes the need for more facilities to meet the customer needs.
- Over 63% of adults in Oregon households are wireless-only for voice service,<sup>1</sup> exceeding the around 59% of adults in American households that are now wireless-only for voice service.<sup>2</sup>
- Residents need access to 9-1-1 and reverse 9-1-1 and wireless may be their only connection.<sup>3</sup> According to the National Emergency Number Association, 240 million calls are made to 9-1-1 each year, and in many areas of the country, 80% or more are made from wireless devices.<sup>4</sup>
- Wireless technology is constantly innovating and evolving to meet customer needs and demand. Goldman Sachs estimates that in the United States, connected devices could create \$305 billion in annual health system savings from decreased costs and mortality due to the enhanced ability to monitor and communicate with patients managing chronic illnesses.<sup>5</sup>

## 9. How Can Cities Address Health Concerns in Relation to the Regulation of Small Wireless Facilities?

While cities and councils may hear public testimony on health concerns related to RF exposure, the cities cannot base decisions concerning small wireless facilities on those concerns. The federal 1996 Telecommunications Act expressly preempts state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of RF emissions to the

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<sup>1</sup> CDC's *Wireless Substitution: Early Release of State-Level Estimates from the National Health Interview Survey*, 2018 (released 12/17/2019)

<sup>2</sup> CDC's *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey*, January-June 2019 (released 05/28/2020)

<sup>3</sup> CTIA, *June 2015*

<sup>4</sup> *National Emergency Number Association (NENA), 2018*

<sup>5</sup> <https://www.ctia.org/the-wireless-industry/infographics-library?topic=17>

extent that such facilities comply with the FCC's regulations concerning such emissions. 47 U.S.C. §332(c)(7)(B)(iv). Although cities may require applicants of the small wireless facilities to affirm compliance with the FCC RF exposure requirements, the FCC remains the exclusive agency for resolving non-compliance.

### **10. Where Can I Go to Find Out More About Health Effects from Small Wireless Facilities?**

The FCC requirements for human exposure to RF electromagnetic fields continue to apply and were derived from the recommendations of two expert organizations, the National Council on Radiation Protection and Measurements (“NCRP”) and the Institute of Electrical and Electronics Engineers (“IEEE”). Both the NCRP exposure criteria and the IEEE standard were developed by expert scientists and engineers after extensive reviews of the scientific literature related to RF biological effects. The RF exposure limits are based on thresholds for known adverse effects, and they incorporate prudent margins of safety. In adopting the current RF exposure guidelines, the FCC consulted with the EPA, FDA, OSHA and NIOSH, and obtained their support for the guidelines that the FCC is using. More information can be found at the FCC’s website at <http://www.fcc.gov/oet/rfsafety/rf-faqs.html>

### **11. Has the FCC Updated its RF Exposure Limits?**

Many local governments have asked the FCC to update their guidelines on RF emissions as technology has advanced and the public continues to be increasingly worried about RF exposure. On December 4, 2019, the FCC released a Resolution of Inquiry, Second Report and Order, Notice of Proposed Rulemaking, and Memorandum of Opinion and Order related to human exposure to RF emissions ([FCC 19-226](#) referred to as the “RF Order”). The FCC maintained in the RF Order that current RF exposure safety standards are sufficient at this time and will remain unchanged. The FCC reached this conclusion because the evidence “does not demonstrate that the science underpinning the current RF exposure limits is outdated or insufficient to protect human safety.” These standards will continue to apply to all wireless devices, including 5G devices and millimeter wave spectrum that some carriers will use to deploy 5G service.

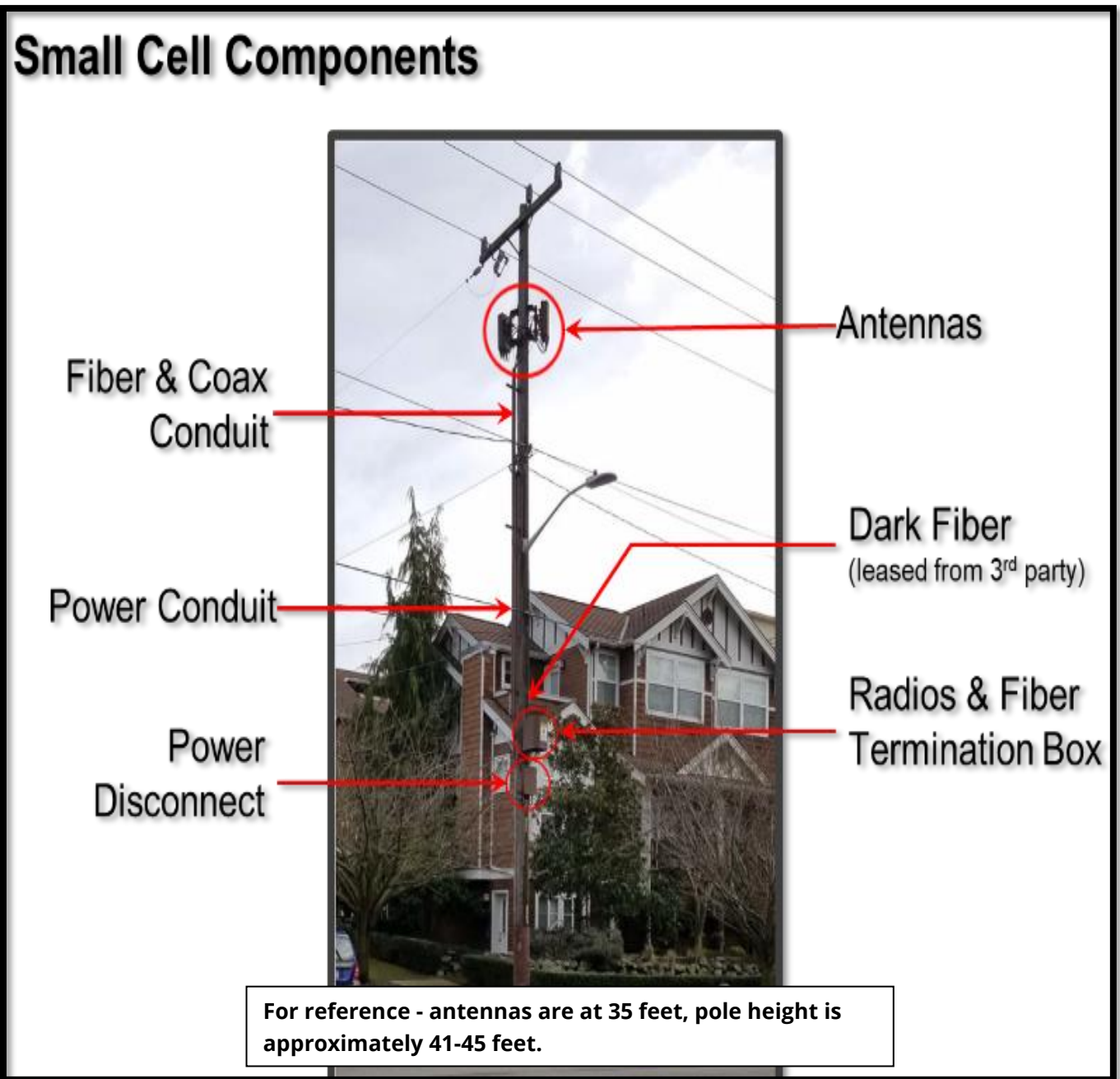
### **12. Will this Site Near My House Affect My Property Value?**

Generally, cities and carriers do not factor in property values in the consideration of the location on these facilities. However, the [National Realtors Association](#), the [Oregon Realtors Association](#), and the [Greater Oregon Chapter of the Appraisal Institute](#) can be consulted on these matters.



## Examples and Further Pictures

*Disclaimer: The carriers have provided several images of actual small cell installations on various types of poles. Estimated pole heights have been provided as a frame of reference. These pictures are intended to be representative of the different types of small cell configurations the providers may deploy, but the exact equipment size, and equipment used, will vary based on the providers frequency and network needs.*



# Small Cell v. Macrocell Antenna

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# Utility Pole

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For reference - antennas are at 35 feet, pole height is approximately 41-45 feet.

# Light Standard

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# Wireless Only Pole

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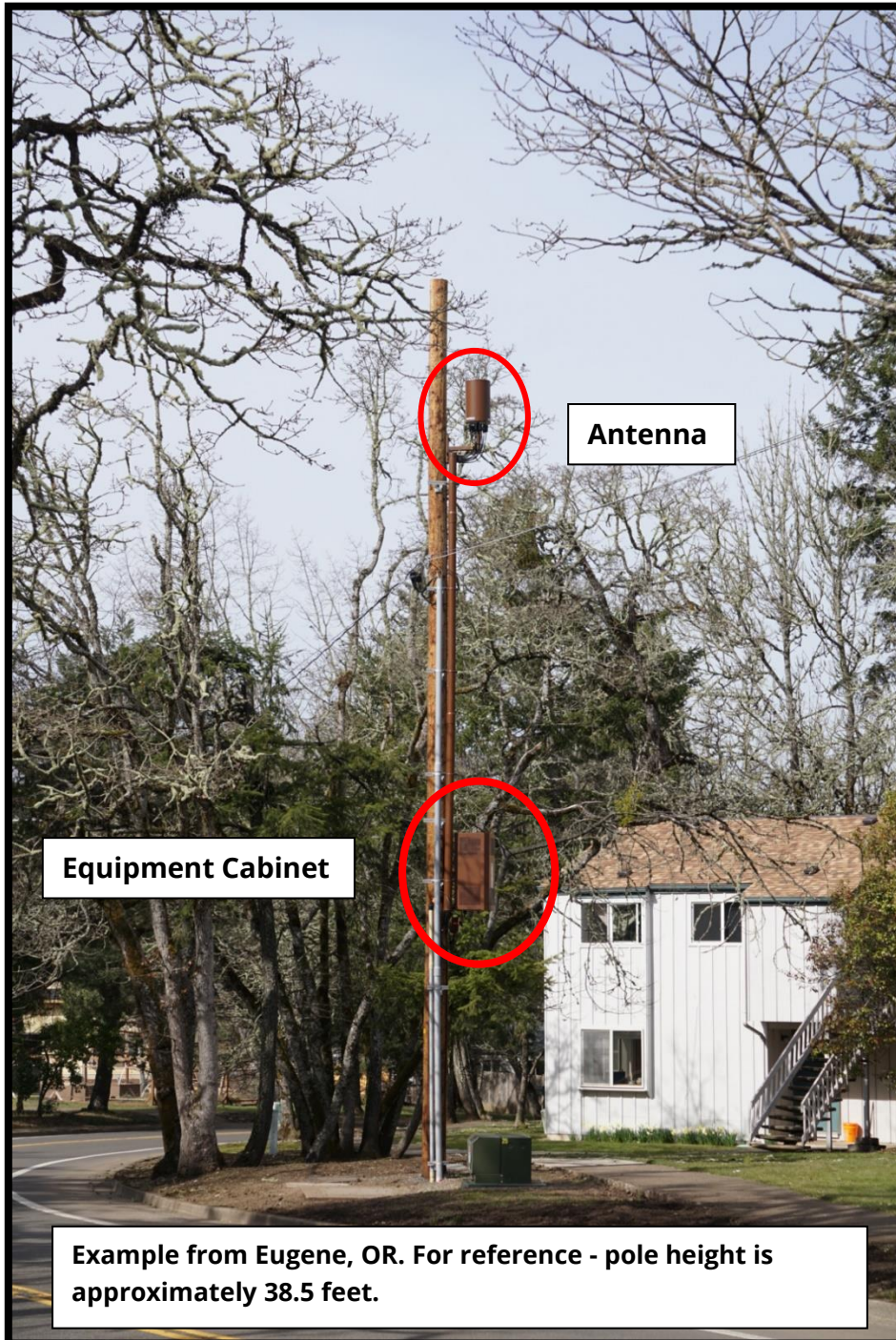
# Strand Mounted Antennas

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# Omni Antennas or Antennas within Canister

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# 4G/5G Installation on a Streetlight

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# Consolidated Equipment Cabinet with Radios and Antennas

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# Small Cell Facility Integrated into A Streetlight Pole

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**Example of a proposed small cell facility integrated into a streetlight pole in Beaverton, OR. For reference - pole height is approximately 30 feet pole.**

## Acknowledgements

Alan Bar, Verizon

Alan Galloway, Davis Wright Tremaine

Andrew Bartlett, City of Hillsboro

Cindy Manheim, AT&T

Colleen DeShazer, Verizon

Dave Waffle, City of Beaverton

George Granger, AT&T

Jennifer Backhaus, City of Milwaukie

Jennifer Li, City of Portland

Ken Lyons, Wireless Policy Group (AT&T)

Kim Allen, Wireless Policy Group (Verizon)

Madison Thesing, City of Lake Oswego

Meridee Pabst, Wireless Policy Group (AT&T)

Pam Vaughan, City of Corvallis

Reba Crocker, ROW Consultants LLC (formerly with the cities of Milwaukie and Gladstone)

Rich Roche, Formerly with AT&T

Ryan Zink, City of Salem

Sambo Kirkman, City of Beaverton

Scott McClure, Formerly with the City of Monmouth

Steve Coon, Verizon

Tegan Enloe, City of Tigard

Tim Halinski, T-Mobile

August 10, 2020

Newport Planning Commission  
Work Session, Agenda Item 3A

Please enter in the record and read as public comment for this agenda item.

Comment: What would your reaction be if asked to recommend approval of a system that would result in tangible infrastructure that forever changed not only the visual context of your daily life but could never be subject or responsive to public scrutiny? And, in the designing of said system, even when it appears there may be recourse to retain a vestige of local control, fallback phrases such as ‘extent feasible’ and ‘technically feasible’ (or ‘not technically feasible’) essentially guarantee the industry benefiting from this system has carte blanche to define what ‘feasible’ means in all situations. That is what you will be asked to do. The big players in the telecom industry (T-Mobile, AT & T, and Verizon) sat down at a table with representatives of municipalities and fashioned an ordinance that caters to its own industry. In addition, the Federal Communications Commission caters to the industry as well (see Forward, page 1, Model Ordinance). Remember, the deployment of 5G (associated with small wireless facilities) is rife with litigation.

In the City’s attachment ‘2020 LOC summary of FCCs 6-9-2020 Declaratory Ruling’ page one, *Oregon’s Named Bad Actors*, bullet no. 3 states:

- Portland and Lane County—WIA (Wireless Infrastructure Association) claim that cities should not be allowed to require RF (radio frequency) reports to ensure compliance with federal standards for local review and approval (note: this is legal but the industry wants to change the law because **compliance is time consuming**).

Although small wireless facilities must meet condition (4) - “the facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. §1.1307(b)”<sup>1</sup> - the Telecom Industry lobbying group calls those who practice this reasonable precaution ‘**bad actors**’. I don’t feel like a ‘bad actor’ although I worked with Lane County for two years in the crafting of its ordinance. I sat down at a table with Lane County and the industry representative.

To ensure that there is no public participation in this process, Small Wireless Facilities Code is recommended to be under Streets and Highway codes<sup>2</sup>, which virtually assures no public participation, and not under Land Use codes (Goal One, under the Oregon Land Use Planning

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<sup>1</sup> LOC Small Wireless Facilities Model Ordinance, page 8. Nowhere is there provision for any oversight of this requirement.

<sup>2</sup> LOC Small Wireless Facilities Model Ordinance, page 1.

program, is about Citizen participation). The telecom industry wants no meaningful public scrutiny or oversight.

In the Forward of the LOC Small Wireless Facilities Model Ordinance (page 1), the Chairman of the FCC established and ‘tasked’ an advisory commission to make recommendations “on ways to accelerate the deployment of broadband by reducing or removing regulatory barriers to infrastructure investment.” ‘Regulatory’ requirements are not necessarily bad and often serve a necessary purpose, but, in the eyes of the telecom industry and Ajit Pai, regulatory requirements are one and the same as barriers to be eliminated. An egregious additional constraint is the shot clock regulation and all the hairline triggers that start the clock ticking. The Community Development Department will need to rely on an algorithm to factor in all actions or inactions that trigger the shot clock.<sup>3</sup> All of this preempts reasonable local control well beyond what is allowed under the 1996 Telecommunications Act, legislation that is horribly lacking in accurately reflecting data from current scientific studies.

You, the Planning Commissioners, now have an opportunity, prior to any recommendations on the codification of a Small Wireless Facilities ordinance, to CAREFULLY evaluate and consider what this proposed system will mean...eventually, it can be deployed but SHOULD it be deployed?

In addition to the small wireless facilities aspect, there is the need for a total upgrade in a dedicated telecommunications ordinance – see the Planning Director’s Memorandum and his Power Point Presentation. This process shouldn’t just be a matter of thinking that technology is the way of the future but HOW TECHNOLOGY WILL SHAPE THE FUTURE of Newport. Please take the time to give this issue serious consideration.

Thank you for your attention,

Mona Linstromberg

Family home: 1442 NW Spring St., Newport

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<sup>3</sup> See both Appendices A and throughout both texts, e.g. page 14 Deviation from Standards, Model Design Standards.

August 10, 2020

Newport Planning Commission  
Work Session, Agenda Item 3A

Please enter in the record and read as public comment for this agenda item.

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Family home: 1442 NW Spring St., Newport

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<sup>3</sup> See both Appendices A and throughout both texts, e.g. page 14 Deviation from Standards, Model Design Standards.

## Sherri Marineau

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**From:** whiteeagle2 <whiteeagle2@protonmail.com>  
**Sent:** Monday, August 10, 2020 3:31 PM  
**To:** Sherri Marineau  
**Subject:** Meeting tonight  
**Attachments:** NPPlan.pdf; NPCDDe-mail.pdf

Hello,

Please find attached two documents I would like submitted to the Commissioners for this evening's meeting, as well as the document in this link.<https://www.access-board.gov/research/completed-research/indoor-environmental-quality/recommendations-for-accommodations#:~:text=%20%20%201%20Remove%20fragrance-emitting%20devices%20%28FEDS%29,lighting%20in%20lieu%20of%20fluorescent%20lighting%20More%20>

Further, I would like to join the meeting (comment), on item 3.A.

My phone number is 541-563-2962.

I will wait for your call telling me how to join.

Thank you,

Eva

Sent with [ProtonMail](#) Secure Email.



Dear Commissioners,

August 10, 2020

Robert F. Kennedy, Jr. and his law team just submitted legal action against the FCC ([https://childrenshealthdefense.org/child-health-topics/known-culprit/electromagnetic/chd-holds-press-conference-on-evidentiary-brief-filing-in-chd-v-fcc-lawsuit/?itm\\_term=home](https://childrenshealthdefense.org/child-health-topics/known-culprit/electromagnetic/chd-holds-press-conference-on-evidentiary-brief-filing-in-chd-v-fcc-lawsuit/?itm_term=home)) due to their decision to **not review the exposure guidelines** in light of the fact that 5G will expose people to invisible lasers (maser) 24/7, and that the standards have not been revised since 1995, when they unscientifically decided that the raising of body temperature within 6 minutes of exposure is all that matters, and no other biological effects. They still defend this absurd guideline despite the fact that the WHO has called this radiation a possible carcinogen, and which scientists believe must be moved to a certain carcinogen, especially in light of the recent National Institutes of Health study showing a indisputable correlation between cancer and cell phone exposure, as well as the Italian Ramazini Institute study showing the same in connection with personal wireless facility broadcasting (“cell”) tower exposure. Now you know the truth.

The State of Oregon passed **SB 283** (<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB283>), which mandates the Department of Education and the Oregon Health Authority (OHA) to review the independent scientific studies on the biological effects of microwave radiation (“wireless”), and we must wait for the results and ramifications of this study before proceeding with an UNKNOWN, and UNTESTED (<https://youtu.be/vZ5soLrvXFg>) technology used in military electromagnetic weapons. ([https://www.youtube.com/watch?v=C2Z\\_cSL24eo&t=1252s](https://www.youtube.com/watch?v=C2Z_cSL24eo&t=1252s))

I sent letter to the Newport community Development Department (see attached), asking for a moratorium be placed on all wireless expansion in the city in light of the recognized disabilities of those suffering from radiowave and microwave injury and sickness. There are MANY who live, work and regularly visit Newport who fall into this category-- and YOU as the government are responsible to protect us.

Further, 5th Generation “wireless.” / Internet of Things is a crime against Humanity, and constitutes Human experimentation in violation of Nuremberg. (<https://www.youtube.com/watch?v=rjpOOk2wbKQ>). I am tired of government ignoring this carcinogenic and life-destroying toxin because you can't see it. The smallest things are the MOST IMPORTANT, as they the size of the atoms and molecules of our cells, and which we absorb. Based on Oregon State Law 283, The legal action being decided in Federal Court, and your obligation to protect the Disabled, including myself, under the Americans Disabilities Act, the Federal Fair Housing Act, the Rehabilitation Act, Section 601 of the Telecommunications Act of 1996, and all of the laws stating you are not allowed to degrade society, but only enhance it, we are asking for a **moratorium** on all wireless equipment and new equipment installation, including the laying of fiber-optic cable. We want a policy of hard-wired communications instituted, starting with removing wireless from schools and moving the current towers to the outer perimeter of town instead of the center of town.

You represent *the people*, not a few for-profit businesses.

This gigantic fiber-optic cable being installed in order to pollute the earth with dangerous, biologically active radiation, has not been tested for emissions-- does it impact the soil microbiome, insects and ground-nesting birds? 5G/Iot is a disaster for society on every level: national security, international relations, global health and the social and psychological health, particularly of young people and children, and privacy,

The Bioinitiative Report catalogues over 3800 studies showing biological effects.  
(<https://bioinitiative.org/table-of-contents/>)

Please **think outside the box**, and create wholesome, safe, environmentally sound, aesthetically beautiful and welcoming for all who come to the Coast for respite, relaxation and health. I guarantee Newport, and Lincoln County, will become a healthier, safer, and sane place, an a model for a sustainable future and planet.

Eva Bortnick

----- Forwarded message -----

From: evelyn <[evesnewday@gmail.com](mailto:evesnewday@gmail.com)>

Date: Thu, Apr 23, 2020 at 5:28 PM

Subject: Re: transmitter apps.

To: Sherri Marineau <[S.Marineau@newportoregon.gov](mailto:S.Marineau@newportoregon.gov)>

*We are subject to a significant amount of litigation, which could require us to pay significant damages or settlements...In addition, our wireless business also faces personal injury and wrongful death lawsuits relating to alleged health effects of wireless phones or radio frequency transmitters. We may incur significant expenses in defending these lawsuits. In addition, we may be required to pay significant awards or settlements*

Verizon Wireless  
2020 Securities and Exchange Commission Form10-K

I oppose the application on the grounds of my ADA Disability. 5G, 5G-ready, or any high-powered, higher frequency, or other emissions conflict with Section 601 of the Telecommunications Act of 1996, and the ADA's provision for equal access for disabled Americans. Please halt any expansion of wireless equipment, otherwise you are in violation of these provisions.

Eva Bortnick  
Susan Greenough  
Kathy Smith  
Katrina Wynne

On Mon, Apr 20, 2020 at 2:49 PM Sherri Marineau <[S.Marineau@newportoregon.gov](mailto:S.Marineau@newportoregon.gov)> wrote:

Hello,

We currently have an application submitted for proposed Verizon equipment install at the American Tower Telecommunication Facility at 3807 SE Ash St in South Beach. The application is to remove existing equipment: (9) Panel, (3) RRU, (6) Diplexer, and install new equipment: (6) Panel, (6) RRU, and (3) Dual Antenna Mounts. They are also adding an antenna mount reinforcement kit to the existing mount. This application is currently under plan review.

Regards,

Sherri Marineau  
City of Newport  
Community Development Department  
169 SW Coast Highway  
Newport, OR 97365  
ph: 541.574.0629 fax: 541.574.0644  
[s.marineau@newportoregon.gov](mailto:s.marineau@newportoregon.gov)



**From:** evelyn <[evesnewday@gmail.com](mailto:evesnewday@gmail.com)>

**Sent:** Monday, April 20, 2020 2:31 PM

**To:** Sherri Marineau <[S.Marineau@NewportOregon.gov](mailto:S.Marineau@NewportOregon.gov)>

**Subject:** transmitter apps.

Hello-- I would like to know if there have been any new applications for radio-transmitters of any kind in the city.

Thank you.

## Sherri Marineau

---

**From:** Susan Greenough <srgreenough@gmail.com>  
**Sent:** Monday, August 10, 2020 4:30 PM  
**To:** Sherri Marineau  
**Subject:** Fwd: Newport Planning Commission Mtg tonight  
**Attachments:** Lt to Newport Planning Commission.docx

----- Forwarded message -----

From: **Susan Greenough** <[srgreenough@gmail.com](mailto:srgreenough@gmail.com)>  
Date: Mon, Aug 10, 2020 at 4:05 PM  
Subject: Newport Planning Commission Mtg tonight  
To: <[publiccomment@newportoregon.org](mailto:publiccomment@newportoregon.org)>

Dear Newport Planning Commission,  
Please find my attached letter in regards to tonight's agenda 3A in regard to 5G.  
I am requesting this letter be read as public comment as I am unable to attend. I am happy at a later date to present in person and testify and provide scientific data to support my letter and request.

Sincerely,  
*Susan Greenough*  
[srgreenough@gmail.com](mailto:srgreenough@gmail.com)  
541-563-4375  
Waldport homeowner  
Psychotherapist, Marriage & Family  
EMF "canary"

August 10, 2020

TO: City of NEWPORT PLANNING COMMISSION

RE: URGENT: 5G Roll Out – on the agenda for today 8/10/2020

Dear Newport Council members and Planning Committee:

Let me introduce myself and tell you why I am concerned about 5G and why you should be too! I have been living in Lincoln Country for six years now. I am a homeowner living in Waldport for three years now.

On the agenda for today's 8/10/202 meeting you have discussion for 5G. I am unable to attend this meeting due to adverse effects from my disability, made MUCH worse by wireless radiation. Additionally, SARS CoV-2 is making it a challenge to attend public meetings with limitations of the number of people that can attend. **I am there for requesting that this letter be read as a public comment**, and copies send to all individuals on this committee.

I'd like to share my personal journey into disability from wireless radiation. In 2006 I began to have headaches when talking on my "smart" phone for more than 20 minutes, even using speaker mode. If I continued past an hour the headache would turn in to migraines that could last 36-72 hours. Then in the Fall of 2009, digital wireless radiating smart meters were installed in my Boise Idaho neighborhood without my consent or knowledge. A couple of weeks later, I began experiencing fevers, night sweats, migraines, problems with short term memory, concentration, anxiety, heart palpitations, insomnia, burning skin and eyes and severe fatigue.

Six months later... my body was unable to fight off infections. H1N1 was followed by Lyme Disease and chronic Epstein Barr Virus. My health was severely declining. I was no longer able to work full time. I was fortunate to have an integrated medical doctor who treated individuals suffering from environmental illness and was **diagnosed as having Electro-Hyper-Sensitivity (EHS) also called microwave radiation sickness**. For additional confirmation, my doctors recommended a week camping trip into the wilderness with no WIFI, no electricity, to see how my body responded without the microwave radiation. Within 6 hours, my body relaxed, I was able to sleep for eight hours or more, my headaches, burning skin and eyes, heart palpitations all immediately improved. Five days later, my son drove me back to Boise. As we moved out of the mountains, along the Payette River heading into Boise, my EHS symptoms returned.

At this time, my doctor told me that my body was too weak from wireless radiation and other electro-magnetic fields (EMF) to even fight ongoing treatments for Lyme Disease and Epstein Barr Virus (EBV). He explained that **pathogens thrive in these high EMFs**, and as I was continuing to get sicker and weaker, I was encouraged to move out of the city, to find a remote location to see if I could recover my health. In 2011, I was too ill to continue working even two half days a week, and had to close my psychotherapy practice and apply for disability. Then I began the search for a low EMF/EMR area, and in 2013 I moved away from family, my doctors, colleagues and friends to move here to the Central Oregon Coast. Within four months of moving to Waldport, and the first time

in six years, my health stopped declining by doing nothing more than leaving a high EMF area to a much lower EMF area. Ever since, I have been working to rebuild a now immune compromised body and also rebuild a life!

Once I built a home here in Waldport, to generate supplemental income, I turned a portion of my healing oasis into a rental. When I posted my Ad on Craigslist, listing my home as a low EMF environment, I was literally BOMBARDED with more inquires than I could keep up with! As I worked my way through applicants, **I was literally stunned and overwhelmed by the sheer numbers of individuals suffering from wireless radiation, desperate to find a low EMF area in hopes of calming and healing their bodies.** These “EMR refugees” had lost their health and most also their careers. These are not lost souls wearing tin foil hats! My houseguests included an attorney, who was a previous IT tech, who became sick from wireless radiation, and now is advocating across the US, testifying in Congress of the harm to children and is now working diligently to educate our legislators and the public. I hosted a school teacher from Los Angeles, who became very ill, when wireless connected laptops were brought into the school for standardized testing, who is now on disability, with many lasting neurological Sx. **I met many professionals, nurses, therapists, who began to research why they are getting sicker and not recovering after smart meters were installed in their communities.** I met people who had lived in their cars or have been camping (some for a decade) as they have found no safe places to live, without their health and lives being devastated by wireless radiation. **These people, like myself, SUFFER when in high electromagnetic fields and wireless radiation. We are the canaries - WE ARE THE EVIDENCE! And science is backing us up!**

The Central Oregon Coast has become my home and my refuge from high levels of wireless radiation. But now, with 5G rolling out with reckless speed, and more and more cell phone towers and panels being installed... I am worried, if we continue on our current path, I will again be an EMR refugee and need to flee this area as well.

I am now adding my voice to others who have fled cities to live here in Lincoln County, NOW IN PROTEST, **fighting for my right to live without harm to my body, without constant exposures to technologies unproven as safe,** invading my home with a “blanket of radiation,” imposing and violating my health and personal freedoms and right to informed consent and privacy.

The current laws state that Cities and Counties need to be complaint with FCC regulations. Lincoln County is unable to insure my safety or be in compliance with FCC regulations as there is no monitoring or even a meter capable of monitoring the levels of radiation that will be flooding my home if these small cell 5G antenna’s dot our beautiful coastal communities, not only along our roadways, but also right next to our homes where we live and sleep and love and play.

Is the City of Newport and Lincoln Country ready to take responsibility to those who *WILL* become symptomatic from this increase of wireless radiation? We are ALL affected, but not all are symptomatic as blood clumps together, the immune system is weakened, neurological conditions worsen, including memory and cognition. Additionally, in the Telecommunication Act, Section 601, it states that the FCC laws do not trump any other law, including Disability Law, including Rights and Recommendations for Accommodation: **“According to the Americans with Disabilities Act (ADA) and other disability laws, public and commercial buildings are required to provide reasonable accommodations for those disabled by chemical and/or electromagnetic sensitivities.”** (Link to source below). Will Lincoln Country have the financial resources to make these accommodations? If you approve for my home to be flooded with radiation and cause further injury to my health, are you willing to cover my medical expenses, and relocate me when I can no longer bear the suffering inflicted upon me without my consent?

I am therefore requesting an immediate MORATORIUM on the increase of any towers, or 5G infrastructure, until they can be proven SAFE and Lincoln Country can ensure compliance with current regulations.

Additionally, I am requesting that this letter be read in the next public mts/forum to accommodate my disability as your meeting places are difficult for me to attend due to wireless routers, nearby cell phone towers, and cell phones on every person in attendance turned on, etc. I am also including links to credible scientific literature on the harmful effects wireless radiation has on our bodies, and our planet. In this time of information, ignorance is a choice!

Deeply concerned Waldport Homeowner,  
*Susan Greenough*  
Psychotherapist and EMR “canary”  
[srgreenough@gmail.com](mailto:srgreenough@gmail.com)

#### SCIENTIFIC DATA and LEGAL TESTIMONY:

Telecom industry executives testifying before Congress - [NO studies have been done on 5G safety!](https://youtu.be/vZ5soLrvXFg)

OVER 700 medical and scientific professionals signed THIS LETTER calling out the FCC's failure to acknowledge independent science and protect public health and the environment from ultra-high wireless radiation frequencies.

[https://ed84ae68-328e-42f4-847a-66fb863ac9df.filesusr.com/ugd/2cea04\\_846b6754a3904ad6b5d325bab4a32f06.pdf](https://ed84ae68-328e-42f4-847a-66fb863ac9df.filesusr.com/ugd/2cea04_846b6754a3904ad6b5d325bab4a32f06.pdf)

The image is a screenshot of a presentation slide. At the top left, it says "Hamford Meeting January 15, 2020". The main title is "NTP Implications: FCC Limits are Inadequate". Below the title is a bulleted list of findings. The first bullet point states: "Study was designed to test the assumption underlying FCC and ICNIRP exposure limits- that heat is the only effect. The findings refute this assumption, as effects arose without heat." This is followed by three sub-bullets: "Increases in the incidence of brain tumors (gliomas) and malignant Schwannomas of the heart corroborate human studies.", "Support IARC classification based on gliomas and acoustic neuromas among long term users of cell phone", and "Exposure intensities, which were limited by potential heat effects at higher levels, are similar to or slightly higher than RF emissions from cell phones". The second main bullet point is "DNA damage in multiple organs in both rats and mice". The third main bullet point is "Latest FCC order fails to show due diligence by not addressing mounting evidence of reproductive, genetic and carcinogenic impacts". At the bottom of the slide, there is a footer with "Screenshot by Screenshoter.com" on the left, "Scroll for details" in the center, and "ENVIRONMENTAL" with a logo on the right.



**5G: Great risk for EU, U.S. and International Health! Compelling Evidence for Eight Distinct Types of Great Harm Caused by Electromagnetic Field (EMF) Exposures and the Mechanism that Causes Them**

Written and Compiled by Martin L. Pall, PhD Professor Emeritus of Biochemistry and Basic Medical Sciences  
Washington State University Address: 638 NE 41st Ave., Portland OR 97232 USA [martin\\_pall@wsu.edu](mailto:martin_pall@wsu.edu) 503-232-3883 May 17, 20

<https://s3.amazonaws.com/media.electrosmogrx.com/dr-pall-5g-hazard-letter.pdf>

**Americans for Responsible Technology – Scientific Studies**

<https://www.americansforresponsibletech.org/scientific-studies>

**Environmental Health Trust – more science on the dangers of wireless radiation (WiFi)**

<https://ehtrust.org/science/>

**Electrohypersensitivity as a Newly Identified and Characterized Neurologic Pathological Disorder: How to Diagnose, Treat, and Prevent It**

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7139347/?fbclid=IwAR051i3k7H2ksZls-QEH\\_9nPoDZtW3KsR6jZKErWB5UumCZLcypVrDCb-\\_E](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7139347/?fbclid=IwAR051i3k7H2ksZls-QEH_9nPoDZtW3KsR6jZKErWB5UumCZLcypVrDCb-_E)

**United States Access Board: Recommendations for Accommodation:**

<https://www.access-board.gov/research/completed-research/indoor-environmental-quality/recommendations-for-accommodations>

**Robert F. Kennedy, Children’s Health Defense: FCC Lawsuit**

[https://childrenshealthdefense.org/child-health-topics/known-culprit/electromagnetic/chd-holds-press-conference-on-evidentiary-brief-filing-in-chd-v-fcc-lawsuit/?itm\\_term=home](https://childrenshealthdefense.org/child-health-topics/known-culprit/electromagnetic/chd-holds-press-conference-on-evidentiary-brief-filing-in-chd-v-fcc-lawsuit/?itm_term=home)

**Attorney testifies before the Michigan State Energy Committee on the topic of WiFi in schools**

<https://www.youtube.com/watch?v=yRVm06ltzYM&feature=youtu.be>

**Stamford Connecticut Meeting January 15, 2020 on the dangers of WiFi and why the City is opposing 5G**

<https://www.youtube.com/watch?v=AmR3FvxachHw&feature=youtu.be>:

# Tentative Planning Commission Work Program

*(Scheduling and timing of agenda items is subject to change)*



**July 13, 2020**

**Work Session**

- Review and Comment on TGM Grant Application for Newport City Center Revitalization Project
- HB 2001 Infrastructure Based Time-Extension Final Rules (DLCD Hearing set for 7/23/20)

**July 13, 2020**

**Regular Session**

- File 2-NCU-20, Final Order and Findings for Conversion of STR from 2-bedroom to 3-bedroom occupancy at 736 NW 3<sup>rd</sup> Street
- File 5-NCU-20, Convert existing STR from 2-bedroom to 4-bedroom occupancy at 406 NW High Street

**July 27, 2020**

**Work Session**

- File 1-Z-20 amendments related to car camping (bill to be taken up during 6/24/20 short session)
- Review scope of work for South Beach US 101 Corridor Refinement Plan
- Director's Comments: discuss video-conference meetings/hearings and needed adjustments

**July 27, 2020**

**Regular Session**

- File 5-NCU-20, Final Order and Findings for Conversion of an existing STR from 2-bedroom to 4-bedroom occupancy at 406 NW High Street

**August 10, 2020**

**Work Session**

- Final Review of File 1-Z-20 amendments related to City' camping regulations
- Introduce LOC's June 2020 Small Cell Model Ordinance and Design Guidelines and latest FCC Bulletin

**August 10, 2020**

**Regular Session**

- File 1-PD-20 OSU Student Housing Final Development Plan Amendment

**August 24, 2020**

**Work Session**

- HB 2001 Middle Housing Options (triplexes, fourplexes, cottage clusters)
- Review updated draft amendments related to tiny homes and MFDs on individual lots

**August 24, 2020**

**Regular Session**

- File 1-Z-20 public hearing on amendments related to car camping
- File 1-PD-20 Final Order and Findings for OSU Student Housing Final Development Plan

**September 14, 2020**

**Work Session**

- Initial review HB 2001 implementation provisions
- Review Initial Draft of Updated Transportation Standards (i.e. frontage improvement requirements)

**September 14, 2020**

**Regular Session**

- TBD

**September 28, 2020**

**Work Session**

- Final review HB 2001 implementation provisions
- Review of draft materials for upcoming TSP outreach events
- Review initial draft of Wireless Ordinance amendments

**September 28, 2020**

**Regular Session**

- File 1-UGB-20, Amending the Urban Growth Boundary adding 39.8 ac at NE Harney and 36th (TL 100, Map 10S11W33) and removing 71.39 ac from the Wolf Tree Destination Resort Site (TL 801, Map 12S11W05)